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Rules and Regulations

Federal Register
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This section of the FEDERAL REGISTER contains regulatory documents having general applicability and legal effect, most of which are keyed to and codified in the Code of Federal Regulations, which is published under 50 titles pursuant to 44 U.S.C. 1510.

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DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 25

[Docket No. NM286; Special Conditions No. 25–270–SC]

Special Conditions: Learjet Inc., Model 55, 55B and 55C Airplanes; High Intensity Radiated Fields (HIRF)

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Final special conditions; request for comments.

SUMMARY: These special conditions are issued for Learjet Inc., Model 55, 55B and 55C airplanes modified by Garrett Aviation Services. These modified airplanes will have a novel or unusual design feature when compared to the state of technology envisioned in the airworthiness standards for transport category airplanes. The modification incorporates the installation of two Honeywell N1 Digital Electronic Engine Controls (DEEC) that perform critical functions. The applicable airworthiness regulations do not contain adequate or appropriate safety standards for the protection of these systems from the effects of high intensity radiated fields (HIRF). These special conditions contain the additional safety standards that the Administrator considers necessary to establish a level of safety equivalent to that established by the existing airworthiness standards.

DATES: The effective date of these special conditions is July 1, 2004. Comments must be received on or before August 16, 2004.

ADDRESSES: Comments on these special conditions may be mailed in duplicate to: Federal Aviation Administration, Transport Airplane Directorate, Attn: Rules Docket (ANM–113), Docket No. NM286, 1601 Lind Avenue, SW., Renton Washington, 98055–4056; or delivered in duplicate to the Transport Directorate at the above address. All comments must be marked: Docket No. NM286.

FOR FURTHER INFORMATION CONTACT: Meghan Gordon, FAA, Standardization Branch, ANM–113, Transport Airplane Directorate, Aircraft Certification Service, 1601 Lind Avenue, SW., Renton, Washington 98055–4056; telephone (425) 227–2138; facsimile (425) 227–1149.

SUPPLEMENTARY INFORMATION:

Comments Invited

The FAA has determined that notice and opportunity for prior public comment is impracticable because these procedures would significantly delay certification of and delivery of the affected airplanes. In addition, the substance of these special conditions has been subject to the public comment process in several prior instances with no substantive comments received. The FAA therefore finds that good cause exists for making these special conditions effective upon issuance. However, the FAA invites interested persons to participate in this rulemaking by submitting comments, data, or views. The most helpful comments reference a specific portion of the special conditions, explain the reason for any recommended change, and include supporting data. We ask that you send us two copies of written comments.

We will file in the docket all comments we receive, as well as a report summarizing each substantive public contact with FAA personnel concerning these special conditions. The docket is available for public inspection before and after the comment closing date. If you wish to review the docket in person, go to the address in the **ADDRESSES** section of this preamble between 7:30 a.m. and 4 p.m., Monday thru Friday, except Federal holidays.

We will consider all comments we receive on or before the closing date for comments. We will consider comments filed late if it is possible to do so without incurring expense or delay. We may change these special conditions based on the comments we receive.

If you want the FAA to acknowledge receipt of your comments on this proposal, include with your comments a pre-addressed, stamped postcard on which the docket number appears. We will stamp the date on the postcard and mail it back to you.

Background

On December 1, 2003, Garrett Aviation Services, 1200 North Airport Drive, Capital Airport Springfield, IL 62707, applied for a Supplemental Type Certificate (STC) to modify Learjet Inc., Model 55, 55B and 55C airplanes approved under Type Certificate No. A10CE. The Learjet Inc., Model 55, 55B and 55C airplanes are transport category airplanes. The Learjet Inc., Model 55, 55B and 55C airplanes are powered by two Garrett TFE731–3A–2B turbofans with a maximum takeoff weight of 21,500 pounds. These aircraft operate with a 2-pilot crew and can hold up to 10 passengers. The modification incorporates the installation of Honeywell N1 Digital Electronic Engine Controls (DEEC). The N1 DEEC is a replacement for the existing Analog Electronic Engine Control (EEC), while also providing additional functional capability in the system. The digital avionics/electronics and electrical systems installed under this project in these airplanes have the potential to be vulnerable to HIRF external to the airplane.

Type Certification Basis

Under the provisions of 14 CFR 21.101, Garrett Aviation Services must show that the Learjet Inc., Model 55, 55B and 55C airplanes, as changed, continue to meet the applicable provisions of the regulations incorporated by reference in Type Certificate No. A10CE, or the applicable regulations in effect on the date of application for the change. The regulations incorporated by reference in the type certificate are commonly referred to as the ''original type certification basis.''

The certification basis for the modified Learjet Inc., Model 55, 55B and 55C airplanes include 14 CFR part 25, dated February 1, 1964, as amended by Amendments 25–1 through 25–20 except for special conditions and exceptions noted in Type Certificate Data Sheet (TDCS) A10CE.

If the Administrator finds that the applicable airworthiness regulations (*i.e.,* part 25, as amended) do not contain adequate or appropriate safety standards for the Learjet Inc., Model 55, 55B and 55C airplanes because of novel or unusual design features, special

conditions are prescribed under the provisions § 21.16.

In addition to the applicable airworthiness regulations and special conditions, the Learjet Inc., Model 55, 55B and 55C airplanes must comply with the noise certification requirement of part 36.

Special conditions, as defined in 14 CFR 11.19, are issued in accordance with § 11.38 and become part of the type certification basis in accordance with § 21.101.

Special conditions are initially applicable to the model for which they are issued. Should Garrett Aviation Services apply at a later date for a supplemental type certificate to modify any other model included on the same type certificate to incorporate the same novel or unusual design feature, these special conditions would also apply to the other model under the provisions of § 21.101.

Novel or Unusual Design Features

The Learjet Inc., Model 55, 55B and 55C airplanes modified by Garrett Aviation Services will incorporate Honeywell N1 DEEC that will perform critical functions. These systems have to potential to be vulnerable to HIRF external to the airplane. The current airworthiness standards (14 CFR part 25) do not contain adequate or appropriate safety standards for the protection of this equipment from the adverse effect of HIRF. Accordingly, this system is considered to be a novel or unusual design feature.

Discussion

There is no specific regulation that addresses protection requirements for electrical and electronic systems from HIRF. Increased power levels from ground-based radio transmitters and the growing use of sensitive avionics/electronics and electrical systems to command and control airplanes have made it necessary to provide adequate protection.

To ensure that a level of safety is achieved that is equivalent to that intended by the regulations incorporated by reference; special conditions are needed for Learjet Inc., Models 55, 55B and 55C airplanes modified by Garrett Aviation Services. These special conditions require that new avionics/electronics and electrical systems that perform critical functions be designed and installed to preclude component damage and interruption of function due to both the direct and indirect effects of HIRF.

High-Intensity Radiated Fields (HIRF)

With the trend toward increased power levels from ground-based transmitters, and the advent of space and satellite communications, coupled with electronic command and control of the airplane, the immunity of critical avionics/electronics and electrical systems to HIRF must be established.

It is not possible to precisely define the HIRF to which the airplane will be exposed in service. There is also uncertainty concerning the effectiveness of airframe shielding for HIRF. Furthermore, coupling of electromagnetic energy to cockpit-installed equipment through the cockpit window apertures is undefined. Based on surveys and analysis of existing HIRF emitters, an adequate level of protection exists when compliance with the HIRF protection special condition is shown with either paragraph 1, or 2 below:

1. A minimum threat of 100 volts rms (root-mean-square) per meter electric field strength from 10 KHz to 18 GHz.

a. The threat must be applied to the system elements and their associated wiring harnesses without the benefit of airframe shielding.

b. Demonstration of this level of protection is established through system tests and analysis.

2. A threat external to the airframe of the field strengths identified in the following table for the frequency ranges indicated. Both peak and average field strength components from the Table are to be demonstrated.

Frequency	Field strength (volts per meter)	
	Peak	Average
10 kHz–100 kHz	50	50
100 kHz–500 kHz	50	50
500 kHz–2 MHz	50	50
2 MHz–30MHz	100	100
30 MHz–70 MHz	50	50
70 MHz–100MHz	50	50
100 MHz–200 MHz ...	100	100
200 MHz–400 MHz ...	100	100
400 MHz–700 MHz ...	700	50
700 MHz–1 GHz	700	100
1 GHz–2 GHz	2000	200
2 GHz–4GHz	3000	200
4 GHz–6 GHz	3000	200
6 GHz–8 GHz	1000	200
8GHz–12 GHz	3000	300
12 GHz–18 GHz	2000	200
18 GHz–40 GHz	600	200

The field strengths are expressed in terms of peak of the root-mean-square (rms) over the complete modulation period.

The threat levels identified above are the result of an FAA review of existing studies on the subject of HIRF, in light of the ongoing work of the Electromagnetic Effects Harmonization Working Group of the Aviation Rulemaking Advisory Committee.

Applicability

As discussed above, these special conditions are applicable to Learjet Inc., Model 55, 55B and 55C airplanes modified by Garret Aviation Services. Should Garrett Aviation Services apply at a later date for a supplemental type certificate to modify any other model included on the same type certificate to incorporate the same novel or unusual design feature, these special conditions would apply to that model as well under the provisions of § 21.101.

Conclusion

This action affects only certain novel or unusual design features on the Learjet Inc., Model 55, 55B and 55C airplanes modified by Garrett Aviation Services. It is not a rule of general applicability and affects only the applicant who applied to the FAA for approval of these features on the airplane.

The substance of these special conditions has been subjected to the notice and comment procedure in several prior instances and has been derived without substantive change from those previously issued. Because a delay would significantly affect the certification of the airplane, which is imminent, the FAA has determined that prior public notice and comment are unnecessary and impracticable, and good cause exists for adopting these special conditions upon issuance. The FAA is requesting comments to allow interested persons to submit views that may not have been submitted in response to the prior opportunities for comment described above.

List of Subjects in 14 CFR Part 25

Aircraft, Aviation safety, Reporting and record keeping requirements.

■ The authority citation for these special conditions is as follows:

Authority: 49 U.S.C. 106(g), 40113, 44701, 44702, 44704.

The Special Conditions

■ Accordingly, pursuant to the authority delegated to me by the Administrator, the following special conditions are issued as part of the supplemental type certification basis for the Learjet Inc., Model 55, 55B and 55C airplanes modified by Garrett Aviation Services.

1. *Protection from Unwanted Effects of High-Intensity Radiated Fields (HIRF).* Each electrical and electronic system that performs critical functions must be designed and installed to ensure that the operation and operational capability of these systems

to perform critical functions are not adversely affected when the airplane is exposed to high-intensity radiated fields.

2. For the purpose of these special conditions, the following definition applies: *Critical Functions:* Functions whose failure would contribute to or cause a failure condition that would prevent the continued safe flight and landing of the airplane.

Issued in Renton, Washington, on July 1, 2004.

Kalene C. Yanamura,

Acting Manager, Transport Airplane Directorate, Aircraft Certification Service.

[FR Doc. 04–16101 Filed 7–14–04; 8:45 am]

BILLING CODE 4910–13–P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 71

[Docket No. FAA–2004–18014; Airspace Docket 04–ACE–43]

Modification of Class E Airspace; Fairbury, NE

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Direct final rule; request for comments.

SUMMARY: This action amends title 14 Code of Federal Regulations, part 71 (14 CFR 71) by revising Class E airspace at Fairbury, NE. A review of the Class E airspace area extending upward from 700 feet above the surface at Fairbury, NE revealed it does not reflect the current Fairbury Municipal Airport reference point (ARP) and is not in compliance with established airspace criteria. This airspace area is enlarged and modified to conform to FAA Orders.

DATES: This direct final rule is effective on 0901 UTC, September 30, 2004. Comments for inclusion in the Rules Docket must be received on or before August 10, 2004.

ADDRESSES: Send comments on this proposal to the Docket Management System, U.S. Department of Transportation, Room Plaza 401, 400 Seventh Street, SW., Washington, DC 20590–0001. You must identify the docket number FAA–2004–18014/ Airspace Docket No. 04–ACE–43, at the beginning of your comments. You may also submit comments on the Internet at *http://dms.dot.gov.* You may review the public docket containing the proposal, any comments received, and any final disposition in person in the Dockets Office between 9 a.m. and 5 p.m., Monday through Friday, except Friday holidays. The Docket Office (telephone 1–800–647–5527) is on the plaza level of the Department of Transportation NASSIF Building at the above address.

FOR FURTHER INFORMATION CONTACT: Brenda Mumper, Air Traffic Division, Airspace Branch, ACE–520A, DOT Regional Headquarters Building, Federal Aviation Administration, 901 Locust, Kansas City, MO 64106; telephone: (816) 329–2524.

SUPPLEMENTARY INFORMATION: This amendment to 14 CFR part 71 modifies the Class E airspace area extending upward from 700 feet above the surface at Fairbury, NE. An examination of controlled airspace for Fairbury, NE revealed that the Fairbury Municipal Airport ARP used in the legal description for this Class E airspace area is incorrect and that the airspace area does not comply with airspace requirements for diverse departures as set forth in FAA Order 7400.2E, Procedures for Handling Airspace Matters. The examination also identified a discrepancy in the length of an extension to the Class E airspace area. The legal description was not in compliance with FAA Order 8260.19C, Flight Procedures and Airspace.

This action expands the Fairbury, NE Class E airspace area extending upward from 700 feet above the surface from a 6.4-mile radius to a 7-mile radius of Fairbury Municipal Airport, corrects the ARP in the legal description, increases the length of the north extension from 9.6 to 9.9 miles and brings the legal description of the Fairbury, NE Class E airspace area into compliance with FAA Orders 7400.2E and 8260.19C. This area will be depicted on appropriate aeronautical charts. Class E airspace areas extending upward from 700 feet or more above the surface of the earth are published in paragraph 6005 of FAA Order 7400.9L, Airspace Designations and Reporting Points, dated September 2, 2003, and effective September 16, 2003, which is incorporated by reference in 14 CFR 71.1. the Class E airspace designation listed in this document will be published subsequently in the Order.

The Direct Final Rule Procedure

The FAA anticipates that this regulation will not result in adverse or negative comment and, therefore, is issuing it as a direct final rule. Previous actions of this nature have not been controversial and have not resulted in adverse comments or objections. Unless a written adverse or negative comment, or a written notice of intent to submit an adverse or negative comment is received within the comment period the regulation will become effective on the date specified above. After the close of the comment period, the FAA will publish a document in the **Federal Register** indicating that no adverse or negative comments were received and confirming the date on which the final rule will become effective. If the FAA does receive, within the comment period, an adverse or negative comment, or written notice of intent to submit such a comment, a document withdrawing the direct final rule will be published in the **Federal Register**, and a notice of proposed rulemaking may be published with a new comment period.

Comments Invited

Interested parties are invited to participate in this rulemaking by submitting such written data, views, or arguments, as they may desire. Comments that provide the factual basis supporting the views and suggestions presented are particularly helpful in developing reasoned regulatory decisions on the proposal. Comments are specifically invited on the overall regulatory, aeronautical, economic, environmental, and energy-related aspects of the proposal. Communications should identify both docket numbers and be submitted in triplicate to the address listed above. Commenters wishing the FAA to acknowledge receipt of their comments on this notice must submit with those comments a self-addressed, stamped postcard on which the following statement is made: ''Comments to Docket No. FAA–2004–18014/Airspace Docket No. 04–ACE–43.'' The postcard will be date/time stamped and returned to the commenter.

Agency Findings

The regulations adopted herein will not have a substantial direct effect on the States, on the relationship between the national Government and the States, or on the distribution of power and responsibilities among the various levels of government. Therefore, it is determined that this final rule does not have federalism implications under Executive Order 13132.

The FAA has determined that this regulation is noncontroversial and unlikely to result in adverse or negative comments. For the reasons discussed in the preamble, I certify that this regulation (1) is not a ''significant regulatory action'' under Executive Order 12866; (2) is not a ''significant rule'' under Department of Transportation (DOT) Regulatory Policies and procedures (44 FR 11034,

February 26, 1979); and (3) if promulgated, will not have a significant economic impact, positive or negative, on a substantial number of small entities under the criteria of the Regulatory Flexibility Act.

List of Subjects in 14 CFR Part 71

Airspace, Incorporation by reference, Navigation (air).

Adoption of the Amendment

■ Accordingly, the Federal Aviation Administration amends 14 CFR part 71 as follows:

PART 71—DESIGNATION OF CLASS A, CLASS B, CLASS C, CLASS D, AND CLASS E AIRSPACE AREAS; AIRWAYS; ROUTES; AND REPORTING POINTS

■ 1. The authority citation for part 71 continues to read as follows:

Authority: 49 U.S.C. 106(g), 40103, 40113, 40120; E.O. 10854, 24 FR 9565, 3 CFR, 1959–1963 Comp., p. 389.

§ 71.1 [Amended]

■ 2. The incorporation by reference in 14 CFR 71.1 of Federal Aviation Administration Order 7400.9L, dated September 2, 2003, and effective September 16, 2003, is amended as follows:

* * * * *

Paragraph 6005 Class E airspace areas extending upward from 700 feet or more above the surface of the earth.

* * * * *

ACE NE E5 Fairbury, NE

Fairbury Municipal Airport, NE
(Lat. 40°10′59″N., long. 97°10′09″W.)
BUXBI Waypoint
(Lat. 40°06′40″N., long. 97°10′12″W.)

That airspace extending upward from 700 feet above the surface within a 7-mile radius of Fairbury Municipal Airport and within 4 miles each side of the 360° bearing from the airport extending from the 7-mile radius to 9.9 miles north of the airport, and within 4 miles each side of the 167° bearing from BUXBI waypoint extending from the 7-mile radius of the airport to 4.3 miles southeast of BUXBI waypoint.

* * * * *

Issued in Kansas City, MO, on June 30, 2004.

Paul J. Sheridan,

Acting Manager, Air Traffic Division, Central Region

[FR Doc. 04–16102 Filed 7–14–04; 8:45 am]

BILLING CODE 4910–13–M

DEPARTMENT OF COMMERCE

Bureau of Industry and Security

15 CFR Parts 736 and 744

[Docket No. 040618189]

RIN 0694–AD21

Revocation of General Order No. 3 Which Imposed License Requirements on Shaykh Hamad bin Ali bin Jaber Al-Thani and Entities Related to or Controlled by Him

AGENCY: Bureau of Industry and Security, Department of Commerce.

ACTION: Final rule.

SUMMARY: This final rule revokes General Order No. 3 of the Export Administration Regulations (EAR). General Order No. 3 imposed a license requirement for exports and reexports of all items on the Commerce Control List destined to or for Shaykh Hamad bin Ali bin Jaber Al-Thani and listed entities related to or controlled by him. This rule also removes a related provision of the EAR.

EFFECTIVE DATE: This rule is effective July 15, 2004.

ADDRESSES: Although there is no public comment period, written comments on this rule may be sent to Sheila Quarterman, Office of Exporter Services, Regulatory Policy Division, Bureau of Industry and Security, Department of Commerce, P.O. Box 273, Washington, DC 20044, or e-mail: *squarter@bis.doc.gov.*

FOR FURTHER INFORMATION CONTACT: Office of Exporter Services, Outreach & Educational Services Division, Bureau of Industry and Security, Department of Commerce, at (202) 482–4811.

SUPPLEMENTARY INFORMATION

Background

In November 2000, Shaykh Al-Thani delivered a Boeing 747 aircraft to Iraqi President Saddam Hussein in Iraq as a gift, in violation of the United Nations Security Council resolution restricting trade with Iraq. To guard against further such diversions to Iraq, the Bureau of Industry and Security issued General Order No. 3 on December 7, 2000, imposing a license requirement for exports and reexports of all items listed on the Commerce Control List (Supplement No. 1 to part 774 of the EAR) and destined to Shaykh Al-Thani or entities related to or controlled by him.

This final rule revokes General Order No. 3. This revocation reflects changed circumstances in Iraq and is consistent with changes in U.S. export control policies concerning Iraq and actions taken by the United Nations Security Council with respect to the embargo against Iraq. This final rule also removes section 744.15 of the EAR, which provided a cross-reference to General Order No. 3.

Although the Export Administration Act expired on August 20, 2001, Executive Order 13222 of August 17, 2001 (3 CFR, 2001 Comp. 783 (2002)), as extended by the Notice of August 7, 2003 (3 CFR, 2003 Comp. 328 (2004)), continues the Regulations in effect under the International Emergency Economic Powers Act.

Rulemaking Requirements

1. This final rule has been determined to be not significant for purposes of E.O. 12866.

2. Notwithstanding any other provision of law, no person is required to respond to, nor shall any person be subject to a penalty for failure to comply with a collection of information, subject to the requirements of the Paperwork Reduction Act of 1995 (44 U.S.C. 3501 *et seq.*) (PRA), unless that collection of information displays a currently valid Office of Management and Budget (OMB) Control Number. This rule involves a collection of information subject to the PRA. This collection has been approved by OMB under control number 0694–0088, ''Multi-Purpose Application,'' which carries a burden hour estimate of 58 minutes for a manual or electronic submission. Send comments regarding these burden estimates or any other aspect of this collection of information, including suggestions for reducing the burden, to David Rostker, Office of Management and Budget (OMB), by e-mail to *David_Rostker@omb.eop.gov,* or by fax to (202) 395–7285; and to the Office of Administration , Bureau of Industry and Security, Department of Commerce, 14th and Pennsylvania Avenue, NW., Room 6883, Washington, DC 20230.

3. This rule does not contain policies with Federalism implications sufficient to warrant preparation of a Federalism assessment under E.O. 13132.

4. The provisions of the Administrative Procedure Act (5 U.S.C. 553) requiring notice of proposed rulemaking, the opportunity for public participation, and a delay in effective date, are inapplicable because this regulation involves a military and foreign affairs function of the United States (5 U.S.C. 553(a)(1)). Further, no other law requires that a notice of proposed rulemaking and an opportunity for public comment be given for this final rule. Because a

notice of proposed rulemaking and an opportunity for public comment are not required to be given for this rule under the Administrative Procedure Act or by any other law, the analytical requirements of the Regulatory Flexibility Act (5 U.S.C. 601 *et seq.*) are not applicable. Therefore, this regulation is issued in final form. Although there is no formal comment period, public comments on this regulation are welcome on a continuing basis. Comments should be submitted to Sheila Quarterman, Office of Exporter Services, Bureau of Industry and Security, Department of Commerce, P.O. Box 273, Washington, DC 20044.

List of Subjects

15 CFR Part 736

Exports, foreign trade.

15 CFR Part 744

Exports, Foreign trade, Reporting and recordkeeping requirements.

■ Accordingly, parts 736 and 744 of the Export Administration Regulations (15 CFR parts 730–799) are amended as follows:

PART 736—[AMENDED]

■ 1. The authority citation for 15 CFR part 736 continues to read as follows:

Authority: 50 U.S.C. app. 2401 *et seq.*; 50 U.S.C. 1701 *et seq.*; 22 U.S.C. 2151 note, Pub. L. 108–175; E.O. 12938, 59 FR 59099, 3 CFR, 1994 Comp., p. 950; E.O. 13020, 61 FR 54079, 3 CFR, 1996 Comp. p. 219; E.O. 13026, 61 FR 58767, 3 CFR, 1996 Comp., p. 228; E.O. 13222, 66 FR 44025, 3 CFR, 2001 Comp., p. 783; E.O. 13338, 69 FR 26751, May 13, 2004; Notice of October 29, 2003, 68 FR 62209, 3 CFR, 2003 Comp., p. 347; Notice of August 7, 2003, 68 FR 47833, 3 CFR, 2003 Comp., p. 328.

■ 2. Supplement No. 1 to part 736 is amended by removing General Order No. 3.

PART 744—[AMENDED]

■ 3. The authority citation for 15 CFR part 744 is revised to read as follows:

Authority: 50 U.S.C. app. 2401 *et seq.*; 50 U.S.C. 1701 *et seq.*; 22 U.S.C. 3201 *et seq.*; 42 U.S.C. 2139a; Sec. 901–911, Pub. L. 106–387; Sec. 221, Pub. L. 107–56; E.O. 12058, 43 FR 20947, 3 CFR, 1978 Comp., p. 179; E.O. 12851, 58 FR 33181, 3 CFR, 1993 Comp., p. 608; E.O. 12938, 59 FR 59099, 3 CFR, 1994 Comp., p. 950; E.O. 12947, 60 FR 5079, 3 CFR, 1995 Comp., p. 356; E.O. 13026, 61 FR 58767, 3 CFR, 1996 Comp., p. 228; E.O. 13099, 63 FR 45167, 3 CFR, 1998 Comp., p. 208; E.O. 13222, 66 FR 44025, 3 CFR, 2001 Comp., p. 783; E.O. 13224, 66 FR 49079, 3 CFR, 2001 Comp., p. 786; Notice of October 29, 2003, 68 FR 62209, 3 CFR, 2003 Comp., p. 347; Notice of August 7, 2003, 68 FR 47833, 3 CFR, 2003 Comp., p. 328.

§ 744.15 [Removed]

■ 4. Part 744 is amended by removing and reserving § 744.15.

Dated: July 5, 2004.

Peter Lichtenbaum,

Assistant Secretary for Export Administration.

[FR Doc. 04–16012 Filed 7–14–04; 8:45 am]

BILLING CODE 3510–33–P

PENSION BENEFIT GUARANTY CORPORATION

29 CFR Parts 4022 and 4044

Benefits Payable in Terminated Single-Employer Plans; Allocation of Assets in Single-Employer Plans; Interest Assumptions for Valuing and Paying Benefits

AGENCY: Pension Benefit Guaranty Corporation.

ACTION: Final rule.

SUMMARY: The Pension Benefit Guaranty Corporation's regulations on Benefits Payable in Terminated Single-Employer Plans and Allocation of Assets in Single-Employer Plans prescribe interest assumptions for valuing and paying benefits under terminating single-employer plans. This final rule amends the regulations to adopt interest assumptions for plans with valuation dates in August 2004. Interest assumptions are also published on the PBGC's Web site (*http://www.pbgc.gov*).

DATES: *Effective Date:* August 1, 2004.

FOR FURTHER INFORMATION CONTACT: Harold J. Ashner, Assistant General Counsel, Office of the General Counsel, Pension Benefit Guaranty Corporation, 1200 K Street, NW., Washington, DC 20005, 202–326–4024. (TTY/TDD users may call the Federal relay service toll-free at 1–800–877–8339 and ask to be connected to 202–326–4024.)

SUPPLEMENTARY INFORMATION: The PBGC's regulations prescribe actuarial assumptions—including interest assumptions—for valuing and paying plan benefits of terminating single-employer plans covered by title IV of the Employee Retirement Income Security Act of 1974. The interest assumptions are intended to reflect current conditions in the financial and annuity markets.

Three sets of interest assumptions are prescribed: (1) A set for the valuation of benefits for allocation purposes under § 4044 (found in appendix B to part 4044), (2) a set for the PBGC to use to determine whether a benefit is payable as a lump sum and to determine lump-sum amounts to be paid by the PBGC (found in appendix B to part 4022), and (3) a set for private-sector pension practitioners to refer to if they wish to use lump-sum interest rates determined using the PBGC's historical methodology (found in appendix C to part 4022).

Accordingly, this amendment (1) adds to appendix B to part 4044 the interest assumptions for valuing benefits for allocation purposes in plans with valuation dates during August 2004, (2) adds to appendix B to part 4022 the interest assumptions for the PBGC to use for its own lump-sum payments in plans with valuation dates during August 2004, and (3) adds to appendix C to part 4022 the interest assumptions for private-sector pension practitioners to refer to if they wish to use lump-sum interest rates determined using the PBGC's historical methodology for valuation dates during August 2004.

For valuation of benefits for allocation purposes, the interest assumptions that the PBGC will use (set forth in appendix B to part 4044) will be 4.30 percent for the first 20 years following the valuation date and 5.00 percent thereafter. These interest assumptions represent a decrease (from those in effect for July 2004) of 0.20 percent for the first 20 years following the valuation date and are otherwise unchanged.

The interest assumptions that the PBGC will use for its own lump-sum payments (set forth in appendix B to part 4022) will be 3.50 percent for the period during which a benefit is in pay status and 4.00 percent during any years preceding the benefit's placement in pay status. These interest assumptions are unchanged from those in effect for July 2004.

For private-sector payments, the interest assumptions (set forth in appendix C to part 4022) will be the same as those used by the PBGC for determining and paying lump sums (set forth in appendix B to part 4022).

The PBGC has determined that notice and public comment on this amendment are impracticable and contrary to the public interest. This finding is based on the need to determine and issue new interest assumptions promptly so that the assumptions can reflect, as accurately as possible, current market conditions.

Because of the need to provide immediate guidance for the valuation and payment of benefits in plans with valuation dates during August 2004, the PBGC finds that good cause exists for making the assumptions set forth in this amendment effective less than 30 days after publication.

The PBGC has determined that this action is not a ''significant regulatory

action'' under the criteria set forth in Executive Order 12866.

Because no general notice of proposed rulemaking is required for this amendment, the Regulatory Flexibility Act of 1980 does not apply. See 5 U.S.C. 601(2).

List of Subjects

29 CFR Part 4022

Employee benefit plans, Pension insurance, Pensions, Reporting and recordkeeping requirements.

29 CFR Part 4044

Employee benefit plans, Pension insurance, Pensions.

■ In consideration of the foregoing, 29 CFR parts 4022 and 4044 are amended as follows:

PART 4022—BENEFITS PAYABLE IN TERMINATED SINGLE-EMPLOYER PLANS

■ 1. The authority citation for part 4022 continues to read as follows:

Authority: 29 U.S.C. 1302, 1322, 1322b, 1341(c)(3)(D), and 1344.

■ 2. In appendix B to part 4022, Rate Set 130, as set forth below, is added to the table. (The introductory text of the table is omitted.)

Appendix B to Part 4022—Lump Sum Interest Rates For PBGC Payments

* * * * *

Rate set	For plans with a valuation date		Immediate annuity rate (percent)	Deferred annuities (percent)				
	On or after	Before		i_1	i_2	i_3	n_1	n_2
*	*	*	*	*	*	*	*	*
130	8–1–04	9–1–04	3.50	4.00	4.00	4.00	7	8

■ 3. In appendix C to part 4022, Rate Set 130, as set forth below, is added to the table. (The introductory text of the table is omitted.)

Appendix C to Part 4022—Lump Sum Interest Rates For Private-Sector Payments

* * * * *

Rate set	For plans with a valuation date		Immediate annuity rate (percent)	Deferred annuities (percent)				
	On or after	Before		i_1	i_2	i_3	n_1	n_2
*	*	*	*	*	*	*	*	*
130	8–1–04	9–1–04	3.50	4.00	4.00	4.00	7	8

PART 4044—ALLOCATION OF ASSETS IN SINGLE-EMPLOYER PLANS

■ 4. The authority citation for part 4044 continues to read as follows:

Authority: 29 U.S.C. 1301(a), 1302(b)(3), 1341, 1344, 1362.

■ 5. In appendix B to part 4044, a new entry, as set forth below, is added to the table. (The introductory text of the table is omitted.)

Appendix B to Part 4044—Interest Rates Used to Value Benefits

* * * * *

For valuation dates occurring in the month—	The values of i_t are:					
	i_t	for t =	i_t	for t =	i_t	for t =
*	*	*	*	*	*	*
August 2004	.0430	1–20	.0500	>20	N/A	N/A

Issued in Washington, DC, on this 9th day of July, 2004.

Joseph H. Grant,

Deputy Executive Director and Chief, Operating Officer, Pension Benefit Guaranty Corporation.

[FR Doc. 04–16002 Filed 7–14–04; 8:45 am]

BILLING CODE 7708–01–P

DEPARTMENT OF HOMELAND SECURITY

Coast Guard

33 CFR Parts 110 and 165

[CGD01–04–088]

RIN 1625–AA87, 1625–AA00, 1625–AA01, 1625–AA11

Regulated Navigation Areas, Anchorage Grounds, Safety and Security Zones; Tall Ships Rhode Island 2004, Narragansett Bay, RI

AGENCY: Coast Guard, DHS.

ACTION: Temporary final rule.

SUMMARY: The Coast Guard is establishing regulated navigation areas, anchorage grounds, and safety and security zones in and adjacent to Narragansett Bay, Rhode Island for the Tall Ships Rhode Island 2004 event. These actions are necessary to provide for the safety of life and property on the navigable waters in and adjacent to Narragansett Bay, Rhode Island and for the security of participating Tall Ships during the Tall Ships Rhode Island 2004 event, Narragansett Bay, Rhode Island. These actions will temporarily restrict vessel traffic in portions of and adjacent to Narragansett Bay.

DATES: This rule is effective from 6 a.m., e.d.t. July 14, 2004 through 8 p.m., e.d.t. July 19, 2004.

ADDRESSES: Documents indicated in this preamble as being available in the docket are part of docket CGD01–04–088 and are available for inspection or copying at the Waterways Management Department, Coast Guard Marine Safety Office Providence, 20 Risho Avenue, East Providence, RI 02914, between 8 a.m. and 3 p.m., Monday through Friday, except Federal holidays.

FOR FURTHER INFORMATION CONTACT: Lieutenant P. Garcia, Waterways Management Department, Coast Guard Marine Safety Office Providence, at (401) 435–2363.

SUPPLEMENTARY INFORMATION:

Regulatory Information

We did not publish a notice of proposed rulemaking (NPRM) for this regulation. Under 5 U.S.C. 553(b)(B), the Coast Guard finds that good cause exists for not publishing an NPRM. Due to the complex planning and coordination involved, final details for the Tall Ships Rhode Island 2004 event were not provided to the Coast Guard until June 22, 2004, making it impossible to publish a NPRM or a final rule 30 days in advance.

Under 5 U.S.C. 553(d)(3), the Coast Guard finds that good cause exists for making this rule effective less than 30 days after publication in the **Federal Register**. Any delay in implementing this rule will be contrary to the public interest due to the risks inherent in this high visibility marine event with the participation of a large number of spectator and participating vessels.

Background and Purpose

Newport, Rhode Island, will host the Tall Ships Rhode Island 2004 festival from July 16–19, 2004. While the Tall Ships Rhode Island 2004 event is not an annual event, this visit of Class A, B and C sailing vessels is part of an annual series of sail training races, rallies, cruise and port festivals organized by the American Sail Training Association (''ASTA'') in conjunction with host ports in the United States and Canada.

The Tall Ships visit to Newport, which will occur from July 14–19, 2004, will include the festival from July 16–19, 2004 and a Parade of Sail on July 19, 2004. Approximately 20 Class A, B and C vessels are expected to participate in the Parade of Sail. These regulations will provide for the safety of life and protection of property on the navigable waters in and adjacent to Narragansett Bay, Rhode Island by preventing the large number of spectator vessels from interfering with the organized Parade of Sail. There will be vessels participating in the event from several foreign countries and the high visibility of this event warrants that both safety and security zones be established to safeguard participating vessels, their crews and the maritime public from sabotage or other subversive acts, accidents, or other hazards of a similar nature.

The participating vessels will anchor in designated anchorages in the East Passage of Narragansett Bay on July 14, 2004. On July 15, 2004, the participating vessels will depart the anchorage area and proceed to moor at Goat Island in preparation for the festival. On July 19, 2004, Coast Guard Cutter (CGC) EAGLE will depart State Pier and the Tall Ships will depart Goat Island and proceed to a parade staging area just seaward of, and adjacent to the East Passage, Narragansett Bay. At noon e.d.t. on July 19, 2004 the vessels will transit up the East Passage, Narragansett Bay, to a turning point just north of Gould Island, the vessels will then transit back down the East Passage, exit Narragansett Bay and head for sea.

These rules create vessel movement controls and safety and security zones for the Parade of Sail, and creates temporary anchorage regulations. The regulations will be in effect at various times in Narragansett Bay and in the waters adjacent to and seaward of East Passage, Narragansett Bay, beginning on July 14, 2004 until July 19, 2004. Vessel congestion due to the large number of participating and spectator vessels poses a significant threat to the safety of life and property. This temporary rulemaking is necessary to ensure the safety of life and property in the navigable waters of the United States, and to safeguard participating vessels, their crews and the maritime public from sabotage or other subversive acts, accidents, or other hazards of a similar nature.

Regulated Navigation Areas

The Coast Guard is establishing three temporary Regulated Navigation Areas in Narragansett Bay, one from July 14–15, 2004, one from July 15–19, 2004 and one on July 19, 2004.

Regulated Navigation Area ''A'' (Area A) is needed to protect the maritime public and participating vessels from hazards to navigation associated with the overnight anchoring of Tall Ships in temporary anchorage Potter Cove located in the East Passage, Narragansett Bay.

Area A includes all waters of charted Anchorage A in the East Passage, Narragansett Bay, that lay north of the Claiborne Pell/Newport Bridge. (The portion of Anchorage A south of the Claiborne Pell/Newport Bridge is not affected by these regulations). This Regulated Navigation Area is effective from 6 a.m. e.d.t. on July 14, 2004 to 8 p.m. e.d.t. on July 15, 2004.

Vessels transiting Area A must do so at no wake speed or at speeds not to exceed 6 knots, whichever is less. Vessels transiting Area A must not maneuver within 20 yards of a Tall Ship or other vessel participating in the Tall Ships Rhode Island 2004 event, unless authorized by the Captain of the Port (COTP) Providence or her designated on-scene representatives. On-scene representatives include commissioned, warrant, and petty officers of the U.S. Coast Guard.

Regulated Navigation Area ''B'' (Area B) is needed to protect the maritime public and participating vessels from hazards to navigation associated with numerous spectator craft approaching

moored Tall Ships berthed at Goat Island and CGC EAGLE berthed at State Pier for the Tall Ships Rhode Island 2004 event.

Area B includes all waters within Newport Harbor south of Goat Island Causeway and north to an east-west line along latitude 41°29′00″N between a point just southwest of Christie's Landing, Newport, in approximate position 41°29′00″N and 71°18′58″W, and the southern tip of Goat Island. This Regulated Navigation Area will be effective from 6 a.m. e.d.t. on July 15, 2004, to noon e.d.t. on July 19, 2004.

Vessels transiting Area B must do so at speeds of at least 3 knots or at no wake speed whichever is more, but not to exceed 6 knots. Vessels transiting Area B must not maneuver within 20 yards of a moored Tall Ship or other vessels participating in the Tall Ships Rhode Island 2004 event, unless authorized by the COTP Providence or her designated on-scene representatives. On-scene representatives include commissioned, warrant, and petty officers of the U.S. Coast Guard. Vessels must enter Area B from the eastern side of Newport Harbor, proceed north in a counterclockwise direction to a turning point south of the causeway, and continue to proceed south along the western side of Newport Harbor to the exit of Area B.

For vessels other than the Tall Ships, those vessels proceeding under sail when not also propelled by machinery, are not allowed in Area B due to increased difficulty in maintaining required speed of advance while sailing, as well as limited maneuvering ability to proceed in a single file behind numerous other spectator craft viewing the moored Tall Ships.

Regulated Navigation Area ''C'' (Area C) is needed to protect the maritime public as well as passenger-for-hire and excursion vessels greater than 50 feet that may be anchored in the East Passage, Narragansett Bay, from hazards to navigation associated with numerous spectator craft during the Parade of Sail.

Area C encompasses that portion of temporary anchorage Potter Cove which includes all waters of charted Anchorage A in the East Passage, Narragansett Bay, that lay north of the Claiborne Pell/Newport Bridge and west of the Picket Line Safety and Security Zone set forth in this regulation. This Regulated Navigation Area is effective from 10 a.m. e.d.t. on July 19, 2004 to 8 p.m. e.d.t. on July 19, 2004.

Vessels transiting Area C must do so at no wake speed or at speeds not to exceed 6 knots, whichever is less. Vessels transiting Area C must not maneuver within 20 yards of an excursion vessel and passenger-for-hire vessel greater than 50 feet permitted to anchor within this area for the viewing of the Parade of Sail, unless authorized by the COTP Providence or her designated on-scene representatives. On-scene representatives include commissioned, warrant, and petty officers of the U.S. Coast Guard.

Anchorage Regulations

The Coast Guard is establishing two temporary Anchorage regulations for Tall Ships participating in the Tall Ships Challenge hosted by the American Sail Training Association, vessels participating in the Tall Ships Rhode Island 2004 event, and authorized excursion and passenger-for-hire vessels greater than 50 feet in length. These regulations will restrict all other vessels from using the Anchorage Grounds during various portions of the Tall Ships Rhode Island 2004 event. These Anchorage Grounds are needed to provide a safe and secure anchorage area for participating Tall Ships prior to berthing at Goat Island, and to provide a safe viewing area for excursion and passenger-for-hire spectator vessels, thereby reducing congestion and traffic conflicts with smaller spectator vessels, while maintaining a clear parade route for the Tall Ships participating in the Parade of Sail.

The Coast Guard is establishing temporary Anchorage ''Potter Cove'' exclusively for Tall Ships participating in ASTA's Tall Ships Challenge and vessels participating in the Tall Ships Rhode Island 2004 Festival. Temporary Anchorage Potter Cove will be of the same coordinates of the existing Anchorage A (set forth in 33 CFR 110.145(a)(1)) in the East Passage, Narragansett Bay, that lay north of the Claiborne Pell/Newport Bridge, and will be established from 6 a.m. e.d.t. on July 14, 2004 until 8 p.m. e.d.t. on July 15, 2004.

The Coast Guard is establishing temporary Anchorage ''Potter Cove II'' exclusively for spectator vessels greater than 50 feet in length carrying passengers-for-hire for the viewing of the Parade of Sail. Temporary Anchorage Potter Cove II will be of the same coordinates of the existing Anchorage A in that portion that lies north of the Claiborne Pell/Newport Bridge and west of the Safety and Security Zone Picket Line, and will be established from 10 a.m. e.d.t. on July 19, 2004 until 8 p.m. e.d.t. on July 19, 2004.

Anchorages Potter Cove and Potter Cove II will be entirely within the same area as the Regulated Navigation Area ''A''. Therefore vessels other than those participating in ASTA's Tall Ships Challenge and the Tall Ships Rhode Island 2004 event as well as authorized spectator vessels, will not be permitted to anchor and must transit at reduced speeds staying at least 20 yards away from any Tall Ship and authorized spectator vessels.

Safety and Security Zones

The Coast Guard is establishing two Safety and Security Zones for the Tall Ships Rhode Island 2004 event.

Safety and Security Zone ''Staging Area'' is a staging area for the Parade of Sail participants just seaward of and adjacent to the East Passage, Narragansett Bay, and extending in a 1000 yard radius from a point at latitude 41°25′00″N, longitude 71°23′00″W. Coordinates are in North American Datum, (NAD) 1983. Safety and Security Zone ''Staging Area'' will be in effect from 10 a.m. e.d.t. on July 19, 2004 until 8 p.m. e.d.t. on July 19, 2004.

Safety and Security Zone ''Picket Line'' covers all waters of the East Passage, Narragansett Bay, within the following boundaries: Beginning at approximate position 41°27′19″N, 71°23′08″W, which marks the western end of the Parade of Sail start line, then northward to the Lighted Gong Buoy ''7'' (LLNR 17800) in approximate position 41°28′18″N, 71°22′14″W, then to the Lighted Gong Buoy ''9'' (LLNR 17805) in approximate position 41°28′38″N, 71°21′15″W, then to the Lighted Bell Buoy ''11'' (LLNR 17810) in approximate position 41°29′00″N, 71°21′00″W, then to approximate position 41°29′33″N, 71°21′04″W, then to approximate position 41°30′19″N, 71°21′04″W below the Claiborne Pell/Newport Bridge, then to approximate position 41°31′07″N, 71°21′17″W, then to approximate position 41°31′49″N, 71°21′26″W, then to approximate position 41°32′30″N, 71°21′22″W, then to approximate position 41°33′00″N, 71°21′17″W, then to the U.S. Navy Buoy ''E'' in approximate position 41°33′38″N, 71°21′00″W, then to the U.S. Navy Buoy ''F'' in approximate position 41°33′52″N, 71°20′27″W, then to the charted Halfway Rock in approximate position 41°33′48″N, 71°19′55″W. The Safety and Security Zone Picket Line will continue southward to approximate position 41°33′14″N, 71°19′125″W, then to approximate position 41°32′28″N, 71°19′306″W, then to approximate position 41°31′55″N, 71°19′427″W, then to the Lighted Bell Buoy ''14'' (LLNR 17940) in approximate position 41°31′00″N, 71°20′04″W, then to approximate position 41°30′28″N, 71°20′21″W, then to approximate

position 41°30′12″, 71°20′30″W below the Claiborne Pell/Newport Bridge, then to the Mitchell Rock Gong Buoy ''3'' (LLNR 17865) in approximate position 41°29′34″N, 71°20′11″W, then to the Goat Island Southwest Buoy ''1'' (LLNR 17825) in approximate position 41°28′57″N, 71°19′14″W, then to approximate position 41°29′30″N, 71°20′13″W, then to approximate position 41°28′22″N, 71°20′00″W, then to approximate position 41°27′55″N, 71°21′43″W, then to the Bell Buoy ''6'' (LLNR 17790) in approximate position 41°27′27″N, 71°21′57″W, then to approximate position 41°26′57″N, 71°21′57″W, which marks the eastern end of the Parade of Sail start line. This Safety and Security Zone will be used for the Tall Ships Parade of Sail parade route and is effective from 10 a.m. e.d.t. on July 19, 2004 until 8 p.m. e.d.t. on July 19, 2004. All coordinates are NAD 1983. All pleasure craft 10 feet and under in length are not allowed within 200 yards of the Picket Line since their presence will dramatically decrease crowd control capability, thus creating further safety and security concerns for all participants. This Safety and Security Zone is designed to fit the needs of safety by facilitating the transit of participating vessels through the parade route and minimizing the impact on the maritime community.

No vessel may enter, remain in, or transit within the Safety and Security Zone Picket Line unless authorized by the Coast Guard COTP Providence or her on-scene designated representatives as defined above. Each person or vessel in a safety zone shall obey any direction or order of the COTP.

This safety and security zone regulation is enforceable by the terms set forth by 33 United States Code (U.S.C.) 1232. Enforcement of violations of these regulations may include, in addition to any civil and criminal penalties authorized by 33 U.S.C. 1232, *in rem* liability against the offending vessel as well as license sanctions against the offending mariner. This regulation is published under the authority contained in title 33 U.S.C. 1223 and 1225, and the regulations promulgated thereunder.

Discussion of Rule

This rule provides for the safety and security of spectator craft, mariners, and the Tall Ships themselves while the Tall Ships are: anchored prior to berthing availability at Goat Island, loitering while awaiting tug escort to their assigned berths, while berthed at Goat Island and State Pier, Newport, Rhode Island, during the Tall Ships Rhode Island 2004 event, loitering and making preparations in the staging area prior to the Parade of Sail, and proceeding in the Parade of Sail. During the Parade of Sail, the Tall Ships will be under way, most likely under sail, and with limited mobility. The actual Parade of Sail is scheduled to last approximately eight hours, beginning at noon e.d.t. on July 19, 2004 and ending at approximately 8 p.m. e.d.t. on July 19, 2004. The parading vessels will muster at a staging area just seaward of the East Passage, Narragansett Bay, and then transit north through the East Passage, underneath the Claiborne Pell/Newport Bridge, then to a turning point just south of the charted Halfway Rock, then return south through the East Passage, underneath the Claiborne Pell/Newport Bridge, then exit the parade route and head for sea.

This rule gives the Coast Guard the authority to ensure the safety of all vessels participating in the Tall Ships Rhode Island 2004 event as well as spectators and recreational craft enjoying the event.

Regulatory Evaluation

This rule is not a ''significant regulatory action'' under section 3(f) of Executive Order 12866, Regulatory Planning and Review, and does not require an assessment of potential costs and benefits under section 6(a)(3) of that Order. The Office of Management and Budget has not reviewed it under that Order. It is not ''significant'' under the regulatory policies and procedures of the Department of Homeland Security (DHS).

We expect the economic impact of this rule to be so minimal that a full Regulatory Evaluation under the regulatory policies and procedures of DHS is unnecessary. These regulations involve only the southern portion of Narragansett Bay and will close the East Passage to commercial traffic only during the eight-hour window for the Parade of Sail on July 19, 2004. The West Passage will remain open to vessel traffic at all times. The impact of this regulation will not be significant because the majority of these regulations will be in effect for approximately eight hours, the expected duration of the Parade of Sail, and most vessel traffic can pass safely around affected areas of the East Passage by transiting through the West Passage, Narragansett Bay. Additionally, extensive advanced notifications will be made to the maritime community via the Local Notice to Mariners, marine information broadcasts, local port safety committee meetings, area newspapers, and e-mail Marine Safety Information Bulletins. Mariners will be able to adjust their plans accordingly based on the extensive advance information. Additionally, the regulated navigation area, anchorage grounds, and safety and security zones have been narrowly tailored to impose the least impact on maritime interests yet provide the level of safety and protection deemed necessary.

Small Entities

Under the Regulatory Flexibility Act (5 U.S.C. 601–612), we have considered whether this rule will have a significant economic impact on a substantial number of small entities. The term ''small entities'' comprises small businesses, not-for-profit organizations that are independently owned and operated and are not dominant in their fields, and governmental jurisdictions with populations of less than 50,000.

The Coast Guard certifies under 5 U.S.C. 605(b) that this rule will not have a significant economic impact on a substantial number of small entities.

This rule may affect the following entities, some of which might be small entities: The owners or operators of vessels intending to transit or anchor in a portion of Narragansett Bay on July 14 and July 15, 2004, and particularly during the Parade of Sail on July 19, 2004, when the navigation channel in the East Passage, Narragansett Bay, is closed to all traffic except vessels participating in the Parade of Sail.

These regulations will not have a significant economic impact on a substantial number of small entities for the following reasons. The regulations affecting navigation in the East Passage, Narragansett Bay, will be in effect temporarily, and only for those periods of time necessary for the safety and security of the Tall Ships Rhode Island 2004 event participants. Recreational vessel traffic can pass safely around designated safety and security zones and anchorages. Additionally, designated areas for viewing the Parade of Sail have been established to allow for use by commercial tour boats that usually operate in the area. Before the effective periods, the Coast Guard will make notification to the public via Local Notice to Mariners and Broadcast Notice to Mariners.

If you think that your business, organization, or governmental jurisdiction qualifies as a small entity and that this rule would have a significant economic impact on it, please submit a comment (*see* **ADDRESSES**) explaining why you think it qualifies and how and to what degree this rule would economically affect it.

Assistance for Small Entities

Under section 213(a) of the Small Business Regulatory Enforcement Fairness Act of 1996 (Pub. L. 104–121), the Coast Guard offered to assist small entities in understanding the rule so that they could better evaluate its effects on them and participate in the rulemaking process. If this rule will affect your small business, organization, or governmental jurisdiction and you have questions concerning its provisions or options for compliance, please contact Lieutenant P. Garcia, Waterways Management, MSO Providence, at (401) 435–2363.

Small businesses may send comments on the actions of Federal employees who enforce, or otherwise determine compliance with, Federal regulations to the Small Business and Agriculture Regulatory Enforcement Ombudsman and the Regional Small Business Regulatory Fairness Boards. The Ombudsman evaluates these actions annually and rates each agency's responsiveness to small business. If you wish to comment on actions by employees of the Coast Guard, call 1–888–REG–FAIR (1–888–734–3247).

Collection of Information

This rule calls for no new collection of information under the Paperwork Reduction Act of 1995 (44 U.S.C. 3501–3520).

Federalism

A rule has implications for Federalism under Executive Order 13132, federalism, if it has a substantial direct effect on State or local governments and will either preempt State law or impose a substantial direct cost of compliance on them. We have analyzed this rule under that Order and have determined that it does not have implications for federalism.

Unfunded Mandates Reform Act

The Unfunded Mandates Reform Act of 1995 (2 U.S.C. 1531–1538) requires Federal agencies to assess the effects of their discretionary regulatory actions. In particular, the Act addresses actions that may result in the expenditure by a State, local, or tribal government, in the aggregate, or by the private sector of $100,000,000 or more in any one year. Though this rule will not result in such expenditure, we do discuss the effects of this rule elsewhere in this preamble.

Taking of Private Property

This rule will not affect a taking of private property or otherwise have taking implications under Executive Order 12630, Governmental Actions and Interference with Constitutionally Protected Property Rights.

Civil Justice Reform

This rule meets applicable standards in sections 3(a) and 3(b)(2) of Executive Order 12988, Civil Justice Reform, to minimize litigation, eliminate ambiguity, and reduce burden.

Protection of Children

We have analyzed this rule under Executive Order 13045, Protection of Children from Environmental Health Risks and Safety Risks. This rule is not an economically significant rule and does not create an environmental risk to health or risk to safety that may disproportionately affect children.

Indian Tribal Governments

This rule does not have tribal implications under Executive Order 13175, Consultation and Coordination with Indian Tribal Governments, because it does not have a substantial direct effect on one or more Indian tribes, on the relationship between the Federal Government and Indian tribes, or on the distribution of power and responsibilities between the Federal Government and Indian tribes.

Energy Effects

We have analyzed this rule under Executive Order 13211, Actions Concerning Regulations That Significantly Affect Energy Supply, Distribution, or Use. We have determined that it is not a ''significant energy action'' under that order because it is not a ''significant regulatory action'' under Executive Order 12866 and is not likely to have a significant adverse effect on the supply, distribution, or use of energy. The Administrator of the Office of Information and Regulatory Affairs has not designated it as a significant energy action. Therefore, it does not require a Statement of Energy Effects under Executive Order 13211.

Technical Standards

The National Technology Transfer and Advancement Act (NTTAA) (15 U.S.C. 272 note) directs agencies to use voluntary consensus standards in their regulatory activities unless the agency provides Congress, through the Office of Management and Budget, with an explanation of why using these standards would be inconsistent with applicable law or otherwise impractical. Voluntary consensus standards are technical standards (*e.g.*, specifications of materials, performance, design, or operation; test methods; sampling procedures; and related management systems practices) that are developed or adopted by voluntary consensus standards bodies.

This rule does not use technical standards. Therefore, we did not consider the use of voluntary consensus standards.

Environment

We have analyzed this rule under Commandant Instruction M16475.lD, which guides the Coast Guard in complying with the National Environmental Policy Act of 1969 (NEPA) (42 U.S.C. 4321–4370f), and have concluded that there are no factors in this case that will limit the use of a categorical exclusion under section 2.B.2 of the Instruction. Therefore, this rule is categorically excluded, under figure 2–1, paragraph (34)(f) and (g), of the Instruction, from further environmental documentation. An ''Environmental Analysis Check List'' and a ''Categorical Exclusion Determination'' are available in the docket where indicated under **ADDRESSES.**

List of Subjects

33 CFR Part 110

Anchorage grounds.

33 CFR Part 165

Harbors, Marine safety, Navigation (water), Reporting and recordkeeping requirements, Security measures, Waterways.

■ For the reasons discussed in the preamble, the Coast Guard amends 33 CFR parts 110 and 165 as follows:

PART 110—ANCHORAGE REGULATIONS

■ 1. The authority citation for part 110 continues to read as follows:

Authority: 33 U.S.C. 471, 1221 through 1236, 2030, 2035 and 2071; 33 CFR 1.05–1(g); Department of Homeland Security Delegation No. 0170.1.

■ 2. From 6 a.m. e.d.t. on July 14, 2004 to 8 p.m. e.d.t. on July 19, 2004, temporarily amend § 110.145 by adding the following paragraphs (a)(6), (a)(7), (d)(7), and (d)(8) to read as follows:

§ 110.145 Narragansett Bay, RI.

(a) * * *

(6) *Anchorage Potter Cove.* (i) Temporary Anchorage Potter Cove is of the same coordinates as that portion of charted Anchorage A that lies north of the Claiborne Pell/Newport Bridge, defined in paragraph (a)(1) above.

(ii) This paragraph will be enforced from 6 a.m. e.d.t. on July 14, 2004 until 8 p.m. e.d.t. on July 15, 2004.

(7) *Anchorage Potter Cove II.* Temporary Anchorage Potter Cove II is

of the same coordinates as that portion of charted Anchorage A (defined in paragraph (a)(1) above) in the East Passage, Narragansett Bay, that lay north of the Claiborne Pell/Newport Bridge and west of the temporary Safety and Security Zone Picket Line set forth in 33 CFR 165.T01–088(a)(2).

* * * * *

(d) * * *

(7)(i) Temporary Anchorage Potter Cove is designated for the exclusive use of vessels participating in the American Sail Training Association (ASTA's) Tall Ships Challenge, that will arrive on July 14, 2004, and await berthing availability on Goat Island.

(ii) *Enforcement period.* This paragraph will be enforced from 6 a.m. e.d.t. on July 14, 2004 until 8 p.m. e.d.t. on July 15, 2004.

(8)(i) Temporary Anchorage Potter Cove II is designated for the exclusive use of spectator vessels exceeding 50 feet in length carrying passengers-for-hire for the viewing of the Tall Ships Parade of Sail.

(ii) *Enforcement period.* This paragraph will be enforced from 10 a.m. e.d.t. on July 19, 2004 until 8 p.m. e.d.t. on July 19, 2004.

PART 165—REGULATED NAVIGATION AREAS AND LIMITED ACCESS AREAS

■ 3. The authority citation for part 165 continues to read as follows:

Authority: 33 U.S.C. 1226, 1231; 46 U.S.C. Chapter 701; 33 CFR 1.05–1(g), 6.04–1, 6.04–6, and 160.5; Pub. L. 107–295, 116 Stat. 2064; Department of Homeland Security Delegation No. 0170.1.

■ 4. From 10 a.m. e.d.t. on July 19, 2004 to 8 p.m. e.d.t. on July 19, 2004, temporarily add § 165.T01–088 to read as follows:

§ 165.T01–088 Safety and Security Zones: Tall Ships Rhode Island 2004, Narragansett Bay, Rhode Island.

(a) *Regulated area.* The following areas are established as Safety and Security Zones:

(1) *Staging area safety and security zone:* All waters just seaward of and adjacent to the East Passage, Narragansett Bay, Rhode Island, within a 1000 yard radius from a point at latitude 41°25′00″N, longitude 71°23′00″W. All coordinates are NAD 1983.

(2) *Picket Line safety and security zone:* All waters of the East Passage, Narragansett Bay, Rhode Island, within the following boundaries: Beginning at approximate position 41°27′19″N, 71°23′08″W, which marks the western end of the Parade of Sail start line, then northward to the Lighted Gong Buoy ''7'' (LLNR 17800) in approximate position 41°28′18″N, 71°22′14″W, then to the Lighted Gong Buoy ''9'' (LLNR 17805) in approximate position 41°28′38″N, 71°21′15″W, then to the Lighted Bell Buoy ''11'' (LLNR 17810) in approximate position 41°29′00″N, 71°21′00″W, then to approximate position 41°29′33″N, 71°21′04″W, then to approximate position 41°30′19″N, 71°21′04″W below the Claiborne Pell/Newport Bridge, then to approximate position 41°31′07″N, 71°21′17″W, then to approximate position 41°31′49″N, 71°21′26″W, then to approximate position 41°32′30″N, 71°21′22″W, then to approximate position 41°33′00″N, 71°21′17″W, then to the U.S. Navy Buoy ''E'' in approximate position 41°33′38″N, 71°21′00″W, then to the U.S. Navy Buoy ''F'' in approximate position 41°33′52″N, 71°20′27″W, then to the charted Halfway Rock in approximate position 41°33′48″N, 71°19′55″W. The Safety and Security Zone Picket Line will continue southward to approximate position 41°33′14″N, 71°19′125″W, then to approximate position 41°32′28″N, 71°19′306″W, then to approximate position 41°31′55″N, 71°19′427″W, then to the Lighted Bell Buoy ''14'' (LLNR 17940) in approximate position 41°31′00″N, 71°20′04″W, then to approximate position 41°30′28″N, 71°20′21″W, then to approximate position 41°30′12″N, 71°20′30″W below the Claiborne Pell/Newport Bridge, then to the Mitchell Rock Gong Buoy ''3'' (LLNR 17865) in approximate position 41°29′34″N, 71°20′11″W, then to the Goat Island Southwest Buoy ''1'' (LLNR 17825) in approximate position 41°28′57″N, 71°19′14″W, then to approximate position 41°29′30″N, 71°20′13″W, then to approximate position 41°28′22″N, 71°20′00″W, then to approximate position 41°27′55″N, 71°21′43″W, then to the Bell Buoy ''6'' (LLNR 17790) in approximate position 41°27′27″N, 71°21′57″W, then to approximate position 41°26′57″N, 71°21′57″W, which marks the eastern end of the Parade of Sail start line. All coordinates are NAD 1983.

(b) *Regulations.* No vessels may transit within the Safety and Security Zone Staging Area or the Safety and Security Zone Picket Line without the express authorization of the Coast Guard Captain of the Port (COTP) Providence or her designated on-scene representative. All pleasure craft 10 feet and under in length are not allowed within 200 yards of the Picket Line. All persons and vessels shall comply with the instructions of the COTP or her designated on-scene representative. On-scene representatives include commissioned, warrant, and petty officers of the U.S. Coast Guard. Upon being hailed by siren, radio, flashing light, or other means, the operator of the vessel shall proceed as directed.

(c) *Enforcement period.* This section will be enforced from 10 a.m. e.d.t. on July 19, 2004 until 8 p.m. e.d.t. on July 19, 2004.

■ 5. From 6 a.m. e.d.t. on July 14, 2004 to 8 p.m. e.d.t. on July 15, 2004, temporarily add § 165.T01–089 to read as follows:

§ 165.T01–089 Regulated Navigation Areas: Tall Ships Rhode Island 2004, Narragansett Bay, Rhode Island.

(a) *Regulated area.*

(1) *Regulated Navigation Area A.* (i) The following area is a Regulated Navigation Area: All waters of charted Anchorage A (set forth in 33 CFR 110.145(a)(1)) in the East Passage, Narragansett Bay, that lay north of the Claiborne Pell/Newport Bridge. (The portion of Anchorage A south of the Claiborne Pell/Newport Bridge is not affected by these regulations.)

(ii) *Enforcement period.* This section will be enforced from 6 a.m. e.d.t. on July 14, 2004 to 8 p.m. e.d.t. on July 15, 2004.

(2) *Regulated Navigation Area B.* (i) The following area is a Regulated Navigation Area: All waters within Newport Harbor south of Goat Island Causeway and north to an east-west line along latitude 41°29′00″N between a point just southwest of Christie's Landing, Newport, in approximate position 41°29′00″N and 71°18′58″W, and the southern tip of Goat Island.

(ii) *Enforcement period.* This section will be enforced from 6 a.m. e.d.t. on July 15, 2004 until noon e.d.t. on July 19, 2004.

(3) *Regulated Navigation Area C.* (i) The following area is a Regulated Navigation Area: All waters of charted Anchorage A (set forth in 33 CFR 110.145(a)(1)) in the East Passage, Narragansett Bay, that lay north of the Claiborne Pell/Newport Bridge and west of the temporary Safety and Security Zone Picket Line set forth in 33 CFR 165.T01–088(a)(2). (The portion of Anchorage A south of the Claiborne Pell/Newport Bridge and east of the temporary Safety and Security Zone Picket Line are not affected by these regulations).

(ii) *Enforcement period.* This section will be enforced from 10 a.m. e.d.t. on July 19, 2004 to 8 p.m. e.d.t. on July 19, 2004.

(b) *Regulations.* (1)(i) Vessels transiting Regulated Navigation Area A must do so at no wake speed or at

speeds not to exceed 6 knots, whichever is less.

(ii) Vessels transiting this area must not maneuver within 20 yards of a Tall Ship or other vessel participating in the Tall Ships Rhode Island 2004 Festival (identified by a Tall Ships Rhode Island 2004 flag), unless authorized by the Coast Guard Captain of the Port (COTP) Providence or her designated on-scene representative. On-scene representatives include commissioned, warrant, and petty officers of the U.S. Coast Guard.

(2)(i) Vessels transiting Regulated Navigation Area B must do so at speeds of at least 3 knots or at no wake speed whichever is more, but not to exceed 6 knots.

(ii) Vessels transiting this area must not maneuver within 20 yards of a moored Tall Ship, unless authorized by the Coast Guard Captain of the Port (COTP) Providence or her designated on-scene representative. On-scene representatives include commissioned, warrant, and petty officers of the U.S. Coast Guard.

(iii) Vessels must enter Regulated Navigation Area B in a counterclockwise direction, proceed north along the eastern side of Newport Harbor to a turning point south of the causeway in approximate position 41°29′28″N and 71°19′40″N, then proceed south down the western side of Newport Harbor and exit the area to the left side of the entrance.

(iv) For vessels other than the Tall Ships, those vessels proceeding under sail when not also propelled by machinery, are not allowed in Area B due to increased difficulty in maintaining required speed of advance while sailing, as well as limited maneuvering ability to proceed single file behind numerous other spectator craft viewing the moored Tall Ships.

(3)(i) Vessels transiting Regulated Navigation Area C must do so at no wake speed or at speeds not to exceed 6 knots, whichever is less.

(ii) Vessels transiting Regulated Navigation Area C must not maneuver within 20 yards of an excursion vessel and passenger-for-hire vessel greater than 50 feet permitted to anchor within this area, unless authorized by the COTP Providence or her on-scene representative. On-scene representatives comprise of commissioned, warrant, and petty officers of the U.S. Coast Guard.

Dated: July 9, 2004.

David P. Pekoske,

Rear Admiral, U.S. Coast Guard, Commander, First Coast Guard District.

[FR Doc. 04–16099 Filed 7–12–04; 2:53 pm]

BILLING CODE 4910–15–P

POSTAL SERVICE

39 CFR Part 3

Amendment to Bylaws of the Board of Governors

AGENCY: Postal Service.

ACTION: Final rule.

SUMMARY: On June 15, 2004, the Board of Governors of the United States Postal Service adopted a revision to its bylaws. The purpose of this revision was to reserve the selection of the independent external auditor to the Presidentially-appointed Governors rather than the full Board of Governors. Consequently, the Postal Service hereby publishes this final rule.

EFFECTIVE DATE: June 15, 2004.

FOR FURTHER INFORMATION CONTACT: William T. Johnstone, Secretary of the Board, U.S. Postal Service, 475 L'Enfant Plaza, SW., Washington, DC 20260–1000, (202) 268–4800.

SUPPLEMENTARY INFORMATION: This document publishes a revision to 39 CFR 3.3 and 3.4 of the Bylaws of the Board of Governors of the United States Postal Service. The Board removed and reserved § 3.3(o) which reserved for the full Board the selection of the independent outside auditor. The Board added a new paragraph (k) to § 3.4 to reserve for the Governors the selection of the independent outside auditor. The changes were adopted by the Board on June 15, 2004. The purpose of the changes was to reserve the selection of the independent external auditor to the Presidentially-appointed Governors rather than the full Board of Governors.

List of Subjects in 39 CFR Part 3

Administrative Practice and procedure, Organization and functions (Government agencies), Postal Service.

■ Accordingly, sections 3. 3 and 3.4 of title 39 CFR are amended as follows:

PART 3—BOARD OF GOVERNORS (ARTICLE 111)

■ 1. The authority citation for part three continues to read as follows:

Authority: 39 U.S.C. 202, 203, 205, 401(2), (10), 402, 414, 416, 1003, 2802–2804, 3013; 5 U.S.C. 552b(g), (j); Inspector General Act, 5 U.S.C. app.; Pub. L. 107–67, 115 Stat. 514 (2001).

■ 2. Section 3.3 is amended by removing and reserving paragraph (o).

§ 3.3 Matters reserved for decision by the Board.

* * * * *

(o) [Reserved]

* * * * *

■ 3. Section 3.4 is amended by adding new paragraph (k) to read as follows:

§ 3.4 Matters reserved for decision by the Governors.

* * * * *

(k) Selection of an independent, certified public accounting firm to certify the accuracy of Postal Service financial statements as required by 39 U.S.C. 2008(e).

Neva Watson,

Attorney, Legislative.

[FR Doc. 04–16023 Filed 7–14–04; 8:45 am]

BILLING CODE 7710–12–P

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 52

[CA 295–0441w; FRL–7787–2]

Withdrawal of Direct Final Rule Revising the California State Implementation Plan, Great Basin Unified Air Pollution Control District and Ventura County Air Pollution Control District

AGENCY: Environmental Protection Agency (EPA).

ACTION: Withdrawal of direct final rule.

SUMMARY: On June 7, 2004 (69 FR 31739), EPA published a direct final approval of revisions to the California State Implementation Plan (SIP). These revisions concerned GBUAPCD Rule 406, Open Outdoor Fires, GBUAPCD Rule 407, Incinerator Burning, and Ventura County Rule 56, Open Burning. The direct final action was published without prior proposal because EPA anticipated no adverse comment. The direct final rule stated that if adverse comments were received by July 7, 2004, EPA would publish a timely withdrawal in the **Federal Register**. EPA received a timely adverse comment and is, therefore, withdrawing the direct final approval. EPA will address the comment in a subsequent final action based on the parallel proposal also published on June 7, 2004 (69 FR 31782). As stated in the parallel proposal, EPA will not institute a second comment period on this action. Accordingly, the revision to 40 CFR 52.220, published in the **Federal Register** on June 7, 2004 (69 FR 31739), which was to become effective on August 6, 2004, is withdrawn.

DATES: The direct final rule published on June 7, 2004, at 69 FR 31739, is withdrawn as of July 15, 2004.

FOR FURTHER INFORMATION CONTACT: Al Petersen, Rulemaking Office (AIR–4),

U.S. Environmental Protection Agency, Region IX, (415) 947–4118, *petersen.alfred@epa.gov.*

List of Subjects in 40 CFR Part 52

Environmental protection, Air pollution control, Incorporation by reference, Intergovernmental relations, Particulate matter, Reporting and recordkeeping requirements.

Dated: June 21, 2004.

Wayne Nastri,

Regional Administrator, Region IX.

■ Accordingly, the amendment to 40 CFR 52.220, published in the **Federal Register** on June 7, 2004 (69 FR 31739), which was to become effective on August 6, 2004, is withdrawn.

[FR Doc. 04–15941 Filed 7–14–04; 8:45 am]

BILLING CODE 6560–50–P

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 147

[FRL–7788–1]

State of Alabama; Underground Injection Control Program Revision; Response to Court Remand

AGENCY: Environmental Protection Agency.

ACTION: Final determination on court remand on final rule.

SUMMARY: In this document, the Environmental Protection Agency (EPA) is providing its response to the Eleventh Circuit Court of Appeals' remand in *Legal Environmental Assistance Foundation, Inc.* v. *United States Environmental Protection Agency* (11th Cir. 2001) (hereinafter LEAF II), directing EPA to determine whether Alabama's revised underground injection control (UIC) program covering hydraulic fracturing of coal bed seams to recover methane gas complies with the requirements for Class II wells. In LEAF II, the Eleventh Circuit affirmed EPA's decision to review Alabama's hydraulic fracturing program pursuant to the approval criteria in section 1425 of the Safe Drinking Water Act (SDWA), instead of the approval criteria in section 1422 of the SDWA, and rejected LEAF's claim that EPA's approval of the program pursuant to section 1425 was arbitrary. However, the Court remanded the matter, in part, for EPA ''to determine whether Alabama's revised UIC program complies with the requirements for Class II wells.'' After issuing a proposed response in the April 8, 2004, **Federal Register** and receiving comments on that proposal, EPA has determined that the hydraulic fracturing portion of the State's UIC program relating to coal bed methane production, which was approved under section 1425 of the SDWA, complies with the requirements for Class II wells within the context of section 1425's approval criteria.

ADDRESSES: Documents relevant to this action are available for inspection at a docket, which is located at U.S. Environmental Protection Agency, Region 4, Water Management Division, Ground Water and Drinking Water Branch, Sam Nunn Atlanta Federal Center, 61 Forsyth Street, SW., Atlanta, Georgia 30303. The docket may be accessed between 8 a.m. and 5 p.m., Monday through Friday, excluding legal holidays. A reasonable fee may be charged for copying.

FOR FURTHER INFORMATION CONTACT: General questions, and questions on technical issues concerning today's document should be directed to Larry Cole at (404) 562–9474, or at the address listed in the **ADDRESSES** section. Questions on legal issues concerning today's document should be addressed to Zylpha Pryor, Office of Environmental Accountability, U.S. Environmental Protection Agency—Region 4, 61 Forsyth Street, SW., Atlanta, Georgia 30303; telephone (404) 562–9535.

SUPPLEMENTARY INFORMATION:

Table of Contents

I. Background Information

A. Court Decisions

On May 3, 1994, the Legal Environmental Assistance Foundation, Inc., (LEAF) submitted a petition to EPA to withdraw Alabama's UIC program, asserting that the State was not appropriately regulating injection activities associated with coal bed methane gas production wells. Following the Agency's May 5, 1995, denial of the petition, LEAF sought review of this decision by the United States Court of Appeals for the Eleventh Circuit. On August 7, 1997, in *LEAF* v. *EPA*, 118 F. 3d 1467 (11th Cir. 1997) (LEAF I), the Court held that hydraulic fracturing activities constitute underground injection under Part C of the SDWA and must be regulated by permit or rule. On February 18, 1999, the Eleventh Circuit directed EPA to implement the Court's August 1997 decision. The Court established a schedule for EPA to follow in determining whether, in light of the Court's ruling regarding hydraulic fracturing, EPA should withdraw approval of Alabama's UIC program. In a January 19, 2000, **Federal Register** final rule, EPA announced its determination that Alabama's UIC program regulating hydraulic fracturing associated with coal bed methane production was consistent with the requirements of the SDWA and the LEAF I Court mandate (65 FR 2889, January 19, 2000).

LEAF filed a petition for review of EPA's determination with the Eleventh Circuit Court, arguing that it should be set aside for three reasons. First, LEAF argued that the underground injection of hydraulic fracturing fluids to enhance the recovery of methane gas from coal beds is not underground injection for the secondary or tertiary recovery of natural gas under section 1425 of the SDWA. Second, LEAF contended that wells used for the injection of hydraulic fracturing fluids to enhance the recovery of methane gas from coal beds are Class II wells as defined in 40 CFR 144.6(b), and EPA's classification of hydraulic fracturing as a ''Class II-like underground injection activity'' was not in accordance with law. Third, LEAF argued that, even if Alabama's revised UIC program was covered by the alternative approval procedure of section 1425, EPA's approval of the revised program was arbitrary and capricious. The Eleventh Circuit generally ruled in favor of EPA, holding that: (1) EPA's decision to approve Alabama's hydraulic fracturing program pursuant to section 1425 of the SDWA was a permissible construction of the statute; and (2) EPA was not arbitrary in determining that Alabama's UIC program complies with the section 1425 statutory approval requirements. LEAF II, 276 F.3d at 1260–61, 1265. However, the Court remanded, in part, for EPA to determine whether Alabama's revised program covering the hydraulic fracturing of coal beds to produce methane complies with the requirements for Class II wells. *Id.* at 1264. The purpose of this document is to announce EPA's determination regarding the remanded issue.

B. Section 1425 of the SDWA

Any State that seeks to acquire primary enforcement responsibility for the regulation of Class II wells may, at its option, apply for primacy for its Class II UIC program under the approval criteria in either section 1422 or section 1425 of the SDWA. Approval under either section is aimed at achieving the same fundamental objective of

protecting underground sources of drinking water from endangerment by well injection. However, State program approvals under section 1422(b)(1) of the SDWA are required to meet a different legal standard than State program approvals under section 1425. Section 1425 was added as part of the 1980 amendments to the SDWA to offer States an approval alternative that was not necessarily tied to the detailed regulatory requirements for Class II wells found at 40 CFR parts 124, 144, 145, and 146.

Approval under section 1422(b)(1)(A) requires that the State UIC program meet the requirements of regulations in effect under section 1421. Those regulations, which are found at 40 CFR parts 124, 144, 145, and 146, are very detailed and specific. However, under the alternate section 1425 approval criteria, a State may instead demonstrate that the Class II portion of its UIC program meets the requirements of section 1421(b)(1)(A) through (D) and represents an ''effective'' program to prevent injection which endangers drinking water sources. A State has more flexibility in developing a section 1425-approvable Class II program than if it were developing the same program for approval under section 1422. Similarly, EPA has more discretion to approve a Class II program under the section 1425 criteria, because that program does not have to ''track'' or be ''as stringent as'' each of the Class II-related requirements of 40 CFR parts 124, 144, 145, and 146. *See* 40 CFR 145.11(b)(1). If a State makes a satisfactory demonstration pursuant to section 1425 that its Class II program warrants approval, it has done all that is required to demonstrate that its program complies with the requirements for Class II wells.

II. EPA's Response to Court Remand

During the hydraulic fracturing process, fracturing fluids are injected through methane production wells to create fractures in the formation through which methane flows to the well and up to the surface. In its January 19, 2000, **Federal Register** final rule approving Alabama's UIC program revisions, EPA characterized hydraulic fracturing for the production of coal bed methane as a ''Class II-like underground injection activity.'' In the final rule, EPA acknowledged that its classification scheme recognizes only five classes of wells. However, EPA stated that, since the injection of fracture fluids is often a one-time exercise of extremely limited duration and was ancillary to the well's principal function of producing methane, it did not seem entirely appropriate to ascribe full Class II status to that activity. EPA also based its Alabama well classification decision on the fact that the general UIC ''well classification systems found in 40 CFR 144.6 and 146.5 do not expressly include hydraulic fracturing'' and ''the various permitting, construction, and other requirements found in parts 144 and 146 do not specifically address hydraulic fracturing.'' 65 FR 2892. It is still the case today that EPA has not promulgated national regulations expressly and specifically designed to establish minimum requirements for State programs that regulate hydraulic fracturing of coal beds to enhance methane production.

The LEAF II Court found EPA's classification of Alabama's hydraulically fractured coal bed methane wells as ''Class II-like'' to be inconsistent with the plain language of 40 CFR 144.6, which defines Class II injection wells. In its opinion, the Court held that, even though the injection of fracture fluids is often a one-time exercise of extremely limited duration, ''wells used for the injection of hydraulic fracturing fluids fit squarely within the definition of Class II wells.'' LEAF II, 276 F.3d at 1263; *see also* 40 CFR 144.6(b)(2). In view of its finding that the wells are Class II wells, the Court remanded, in part, for EPA to determine whether Alabama's revised UIC program complies with the requirements for Class II wells.

In applying for approval of that part of its Class II UIC program regulating hydraulic fracturing of coal beds, Alabama could have sought primacy either under section 1422 or section 1425 approval criteria of the SDWA. Since Alabama chose to make its demonstration pursuant to section 1425, EPA appropriately evaluated that part of Alabama's Class II program regulating hydraulic fracturing of coal beds using the section 1425 alternative approval requirements.

To receive approval for its Class II program, or some component thereof, under the optional demonstration, section 1425 requires a State to show that its program meets the following five criteria: (1) Section 1421(b)(1)(A) provides that the State program must prohibit any underground injection which is not authorized by permit or rule; (2) section 1421(b)(1)(B) provides that the State program must require that the applicant for a permit satisfy the State that the underground injection will not endanger drinking water sources and prohibits the State from promulgating any rule that authorizes underground injection which endangers drinking water sources; (3) section 1421(b)(1)(C) requires that the State program include inspection, monitoring, recordkeeping, and reporting requirements; (4) section 1421(b)(1)(D) provides that the State program must apply to underground injections by Federal agencies, as well as underground injections by any other person, whether or not occurring on property owned or leased by the United States; and (5) the State program must represent ''an effective program'' to prevent underground injection which endangers drinking water sources, in accordance with section 1425(a). If a State can successfully demonstrate that its Class II program satisfies all of these requirements, the program has met all the statutory requirements for approval. As previously discussed, under section 1425, that program, or a component thereof, does not have to demonstrate that it contains requirements as stringent as, or identical to, each of the specific Class II requirements found in 40 CFR parts 144 and 146 of EPA's regulations. Instead, a finding that such a program, or component thereof, meets the Class II approval requirements of section 1425 means that such a program, by virtue of that finding, necessarily complies with all applicable statutory and regulatory requirements for Class II wells.

EPA's determination that Alabama's hydraulic fracturing program related to coal bed methane production complied with the section 1425 requirements for Class II program approval was explained in great detail in the January 19, 2000, **Federal Register** final rule. The LEAF II Court held that EPA's determination that Alabama's UIC program complies with the SDWA's statutory requirements was not arbitrary. *LEAF* v. *EPA*, 276 F.3d at 1265. EPA did not reopen that earlier approval decision or solicit additional comment on it. EPA only sought comment on its proposed response to the LEAF II Court's question on remand.

In reviewing and approving Alabama's coal bed methane-related hydraulic fracturing program, EPA was cognizant of the various regulatory provisions in 40 CFR parts 144 and 146, which are designed to prevent Class II injection wells from causing the movement of fluid containing any contaminant into a USDW. EPA generally expects traditional State Class II programs, *i.e.*, those regulating the injection of fluids brought to the surface either in connection with conventional oil and gas production or for enhanced recovery or storage of oil and gas, to demonstrate their ''effectiveness'' to prevent underground injection which endangers USDWs, pursuant to Section 1425, by inclusion of statutory or

regulatory provisions preventing fluid movement. EPA was concerned that according ''full'' Class II status to Alabama's hydraulically-fractured methane production wells could have been misconstrued as requiring a strict application of those ''no fluid movement'' provisions and could have unnecessarily impeded methane gas production in Alabama within the meaning of SDWA section 1441(b)(2) because Alabama's revised program allowed injection of fracturing fluids into USDWs, provided they did not cause a violation of any MCL or otherwise adversely affect the health of persons. *LEAF* v. *EPA*, F.3d at 1264 n.12; EPA brief at 30–31. EPA thus decided to characterize wells used to inject hydraulic fracturing fluids into Alabama's coal bed formations as ''Class II-like,'' rather than Class II. However, this characterization of Alabama's hydraulically-fractured methane production wells, while designed to further ensure that regulation of those wells did not unnecessarily interfere with or impede methane gas production, was unnecessary for purposes of EPA's approval. EPA's decision to approve Alabama's regulation of these wells pursuant to section 1425 is due in part to the unique attributes of hydraulic fracturing in Alabama, as well as to EPA's substantive finding, which was upheld by the LEAF II Court, that Alabama's program does not endanger USDWs because, among other requirements, the injection must not cause a violation of any MCL or otherwise adversely affect the health of persons. EPA thus appropriately exercised the discretion and flexibility inherent in SDWA section 1425 to approve Alabama's coal bed methane-related hydraulic fracturing program despite the fact that it does not prohibit fluid movement into USDWs because: (1) EPA's Class II regulations were not designed to, and do not specifically address the unique technical and temporal attributes of hydraulic fracturing, and (2) more importantly, EPA determined pursuant to section 1425 that Alabama's program is effective at preventing endangerment of USDWs.

In sum, the SDWA gives Alabama more flexibility in developing a section 1425-approvable Class II program for the hydraulic fracturing of coal beds to produce methane than if it were developing the same program for approval under the criteria in section 1422. Similarly, EPA has more discretion to approve Alabama's revised Class II program relating to coal bed methane production under the criteria in section 1425, because that program does not have to ''track'' or be ''as stringent as'' each of the Class II-related requirements of 40 CFR parts 124, 144, 145, and 146. See 40 CFR 145.11(b)(1). Because Alabama made a satisfactory demonstration pursuant to section 1425 that its coal bed methane-related hydraulic fracturing program warranted approval, it did all that was required to demonstrate that its program complies with the requirements for Class II wells.

III. EPA's Response to Public Comments

Summary of Comments

All of the commenters except one supported EPA's determination. One pointed out that the States, which have decades of regulatory experience in protecting ground water from drilling activities, have supervised the fracturing of nearly a million wells without a single occurrence of harm to ground water. This and other statistics were cited by several commenters as evidence of the strength of the State regulatory programs and, conversely, of the lack of need for additional Federal regulation. One commenter noted that any additional regulation would impede production. Another commenter mentioned that because of the unique aspects of hydraulic fracturing as compared to traditional Class II activities, additional Federal regulations, or the application of Class II requirements at the national level on hydraulic fracturing, is unnecessary and would only result in increased costs to the Federal and State governments, as well as to oil and gas operators, with no additional environmental benefit. One commenter found the distinction between classification of hydraulic fracturing wells as Class II or Class II-like to be of no importance given approval under 1425, while another took issue with the holding in LEAF I, which defined hydraulic fracturing as underground injection under Part C of the SDWA. Overall, the supportive submittals were perhaps best summarized by the commenter who stated that EPA's response demonstrates a ''* * * convergence of sound legal reasoning with clear environmental and economic benefits.''

EPA appreciates the comments supportive of its determination and does not believe that they need a response. Those comments regarding decisions already made by the Eleventh Circuit Court are beyond the scope of the remanded issue and therefore do not require a response.

One commenter did not support EPA's determination on the remand. The commenter stated that Alabama's revised underground injection control program for hydraulic fracturing of coalbeds to produce methane gas failed to demonstrate (1) that permit applicants are required to ''satisfy the State that underground injection will not endanger drinking water sources'' and (2) ''that the program represents an effective program to prevent underground injection which endangers drinking water sources.'' Additionally, it said that Alabama's revised program ''does not comply with the requirements for Class II wells.''

The commenter stated that, despite the general requirement in EPA's UIC rules that all new Class II wells shall be sited in such a fashion that they inject into a formation which is separated from any underground source of drinking water by a confining zone that is free of known open faults or fractures within the area of review (40 CFR 146.22(a)), the Alabama program allows hydraulic fracturing fluids to be injected directly into underground sources of drinking water. The commenter also cited a number of other provisions of EPA's UIC rules that the commenter said would ''impose technical requirements for 'good engineering' practices designed to prevent movement of fluids into underground sources of drinking water,'' *e.g.*, 40 CFR 146.23(a), 144.28(f)(6)(ii), 144.52(a)(3), 144.52(a)(9). The commenter noted that ''EPA previously found these technical requirements necessary to effectuate the preventive and public health protective purposes of the Act. 45 FR 42472, 42478 (1980).'' The commenter continued to say that Alabama's requirement that well operators certify that the hydraulic fracturing fluid injectate does not exceed MCLs for drinking water is not sufficient to satisfy the State that the injection will not endanger drinking water sources and does not represent an ''effective method'' to prevent endangerment. A list of constituent hydraulic fracturing fluids that have been used in Alabama was submitted by the commenter, which pointed out that MCLs have been established for only four of the 50 hydraulic fracturing fluid constituents it identified. Moreover, the commenter indicated that an operator's MCL certification did not address whether contaminants in the hydraulic fracturing fluid ''may adversely affect the health of persons.'' It said the Alabama program does not require that the operator or the State Oil and Gas Board of Alabama ensure that injection will not adversely affect the health of persons.

Absent implementation criteria and assignment of implementation responsibility, the commenter stated, the statutory proscription against

contamination which ''may adversely affect the health of persons'' is likely to be ignored by the operator and the State Oil and Gas Board of Alabama until after complaints are received that drinking water supplies have been contaminated. Then, the commenter continued, the proscription will be invoked only to justify the imposition of additional requirements for corrective action as are necessary to prevent a further threat to the health of persons. The commenter believes that this outcome ''is even more likely'' given ''Alabama's and EPA's reluctance to regulate hydraulic fracturing.''

At the outset, EPA must point out that to the extent these comments assert that Alabama's revised underground injection control program for hydraulic fracturing of coalbeds failed to demonstrate that such underground injection ''will not endanger drinking water sources'' and that Alabama's revised program does not represent an ''effective program to prevent underground injection which endangers drinking water sources,'' they merely repeat claims made by LEAF during its challenge in the Eleventh Circuit Court of Appeals to EPA's January 2000 approval of Alabama's program. In its December 21, 2001, opinion generally upholding that approval, the Eleventh Circuit observed that LEAF had made a number of arguments in support of its contention that EPA had arbitrarily approved Alabama's program, including that ''Alabama's revised UIC program fails to require that a permit applicant satisfy the state that underground injection will not endanger underground sources of drinking water'' and that ''Alabama's revised UIC control program does not represent an effective program to prevent underground injection which endangers drinking water sources.'' *LEAF* v. *EPA*, 276 F.3d 1253, 1265 n.13 (11th Cir. 2001). The court said it ''carefully considered'' each of LEAF's arguments and concluded that ''none of these arguments would support setting aside the agency's determination in this case.'' EPA believes that these reasserted, generalized critiques of Alabama's approved program are beyond the limited scope of the Court's remand and does not believe that further response to such critiques is necessary.

More relevant to the issue on remand is the commenter's claim that Alabama's revised UIC program ''does not comply with the requirements for Class II wells.'' In support of that claim, a number of provisions are cited in CFR parts 144 and 146 that apply to Class II wells: 40 CFR 146.22(a), 146.23(a), 144.28(f)(6)(ii), 144.52(a)(3), and 144.52(a)(9). The commenter says that each of these regulatory provisions is designed to prevent movement of fluids containing contaminants into underground sources of drinking water and criticizes Alabama's program for allowing hydraulic fracturing fluids to be injected into underground sources of drinking water.

It is true that Alabama's revised UIC program regulating hydraulic fracturing of coalbed formations (1) allows, under certain limited circumstances, the injection of hydraulic fracturing fluids into underground sources of drinking water and (2) does not contain State regulatory provisions analogous to the CFR part 144 and part 146 provisions cited by LEAF. This does not mean, however, that Alabama's program does not comply with the requirements for Class II wells. As EPA explained at length in its April 2004 proposed determination on remand and again in this document, a State UIC program seeking approval under the alternate SDWA section 1425 approval criteria ''does not have to 'track' or be 'as stringent as' each of the Class-II-related requirements of 40 CFR parts 124, 144, 145, and 146.'' 69 FR 18478, 18479 (April 8, 2004). The commenter does not dispute this in its assertions. Accordingly, the fact that certain provisions of 40 CFR parts 144 and 146 have been identified that are not found in Alabama's revised program does not render that program out of compliance with the requirements for Class II wells.

Nor is it problematic that Alabama requires a certification in writing that ''the mixture of fluids to be used to hydraulically fracture the coal beds does not exceed the maximum contaminant levels contained in 40 CFR part 141, subparts B and G. Alabama Rule 400–3–8–.03(2)(b)(3). It is true that Alabama's certification requirement addresses MCL exceedences, and not whether the operator believes hydraulic fracturing fluid injection will ''adversely affect the health of persons.'' However, this does not mean that the certification requirement is insufficient or ineffective. Alabama's certification requirement must be viewed in the larger context of the program's requirements as a whole. Significantly, the Alabama program expressly requires that each coal bed be hydraulically fractured ''so as not to endanger any underground source of drinking water (USDW).'' Alabama Rule 400–3–8–.03(1). If endangerment occurs despite this prohibition, the well must be plugged and abandoned and remediation of the USDW may be required. Alabama Rule 400–3–8–.03(1). Moreover, the Alabama program expressly provides that coal beds shall not be hydraulically fractured in a manner that allows the movement of fluid containing any contaminant into a USDW, if the presence of that contaminant may cause an exceedence of an MCL or ''otherwise adversely affect the health of persons.'' Alabama Rule 400–3–8–.03(2). So, while the certification requirement does not specifically address whether injected contaminants may ''adversely affect the health of persons,'' the program's fundamental regulatory requirements, as expressly stated in Alabama Rule 400–3–8–.03(1) and (2), prohibit any hydraulic fracturing (within or outside a USDW) that may ''adversely affect the health of persons.'' This prohibition embodies the SDWA's endangerment test in 42 U.S.C. 300h(d). Under Alabama law an operator cannot simply inject ''any quantity'' of a hydraulic fracturing fluid's constituent chemicals into a USDW without regard to whether such injection would violate Alabama Rule 400–3–8–.03(1) and (2) and ''adversely affect the health of persons.'' Contrary to the commenter's view, the Alabama program does require that the operator and the State Oil and Gas Board of Alabama ensure that injection will not ''adversely affect the health of persons.'' It does that by requiring written permission to inject and expressly prohibiting any injections that might ''adversely affect the health of persons.'' And the Eleventh Circuit has found that Alabama's program was ''effective'' for purposes of 42 U.S.C. 300h–4(a).

The commenter asserts that Alabama's approved program lacks sufficient implementation criteria and assignment of implementation responsibility. EPA disagrees. The program's fundamental criteria are clear: no hydraulic fracturing that endangers USDWs, exceeds MCLs, or may ''otherwise adversely affect the health of persons.'' EPA strongly disagrees with the claim that these prohibitions are likely to be ignored by the operator and State Oil and Gas Board of Alabama. Nothing in the record supports that assertion. The placement of implementation responsibility upon the State Oil and Gas Board of Alabama is also clear.

EPA believes the State of Alabama's hydraulic fracturing regulatory program, with its regulatory criteria, technical review process, and written approval procedures, continues to be effective in preventing endangerment to underground sources of drinking water.

Conclusion: EPA has determined that the hydraulic fracturing portion of the State's UIC program relating to coal bed methane production, which was

approved under section 1425 of the SDWA, complies with the requirements for Class II wells within the context of section 1425's approval criteria.

Dated: July 9, 2004.

Benjamin H. Grumbles,

Acting Assistant Administrator for Water.

[FR Doc. 04–16075 Filed 7–14–04; 8:45 am]

BILLING CODE 6560–50–P

FEDERAL COMMUNICATIONS COMMISSION

47 CFR Part 73

[DA 04–1650; MM Docket No. 02–290; RM–10527, RM–10772, RM–10773]

Radio Broadcasting Services; Franklin, ID and Richfield, UT

AGENCY: Federal Communications Commission.

ACTION: Final rule, correction.

SUMMARY: The Federal Communications Commission published in the **Federal Register**, of June 25, 2004, a document which granted multiple channels substitutions and changes of community of license in Utah, Colorado, Idaho and Wyoming. The amendatory language requested removal of channels not currently listed in Section 73.202(b), FM Table of Allotments for Franklin, Idaho and Richfield, Utah. This document corrects the amendatory language under Idaho by removing Channel 249A at Franklin in lieu of Channel 248C1. Additionally, the published document substituted Channel 249C for Channel 248C at Richfield, Utah, reallotted Channel 249C to Elsinore, Utah, and modified the license of Station KLGL to specify operation on Channel 249C at Elsinore. In this case, the FM Table of Allotments lists Channel 248 for Richfield, Utah not Channel 248C, therefore this document corrects the amendatory language under Utah by removing Channel 248 at Richfield instead of Channel 248C.

DATES: Effective July 26, 2004.

FOR FURTHER INFORMATION CONTACT: Robert Hayne, Media Bureau, (202) 418–2177.

SUPPLEMENTARY INFORMATION: The FCC published a document in the **Federal Register** of June 25, 2004, (69 FR 35531) granting multiple channels substitutions and changes of community of license in Utah, Colorado, Idaho and Wyoming. In FR Doc. 04–14483, published in the **Federal Register** of June 25, 2004, (69 FR 35531), the amendatory language inadvertently listed the removal of channels not currently reflected in the FM Table of Allotments for Franklin, Idaho and Richfield, Utah. This document corrects the amendatory language to reflect the removal of channels currently listed in the FM Table of Allotments for Franklin, Idaho and Richfield, Utah.

■ In rule FR Doc. 04–14483 published on June 25, 2004, (69 FR 35531) make the following corrections:

§ 73.202 [Amended]

■ 1. On page 35532, in the first column, paragraph number 3, § 73.202(b), the Table of FM Allotments under Idaho, is amended by removing Channel 249A at Franklin.

■ 2. On page 35532, in the first column, paragraph number 4, § 73.202(b), the Table of FM Allotments under Utah, is amended by removing Channel 248 at Richfield.

Dated: July 8, 2004.

John A. Karousos,

Assistant Chief, Audio Division, Media Bureau.

[FR Doc. 04–15987 Filed 7–14–04; 8:45 am]

BILLING CODE 6712–01–P

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

50 CFR Part 660

[Docket No. 040624193–4193–01; I.D. 060304A]

RIN 0648–AS43

Fisheries Off West Coast States and in the Western Pacific; Pacific Coast Groundfish Fishery

AGENCY: National Marine Fisheries Service (NMFS), National Oceanic and Atmospheric Administration (NOAA), Commerce.

ACTION: Final rule.

SUMMARY: NMFS is re-arranging the Pacific Coast Groundfish regulations so that they read in a more logical order. This final rule does not make substantive changes to the existing regulations; rather, it reorganizes regulatory measures into a more logical and cohesive order. This final rule also amends references to Paperwork Reduction Act (PRA) information-collection requirements to reflect this reorganization of regulatory language. The purpose of this final rule is to make the regulations more concise, better organized, and thereby easier for the public to use.

DATES: Effective July 15, 2004.

FOR FURTHER INFORMATION CONTACT: Yvonne deReynier (Northwest Region, NMFS), phone: 206–526–6129; fax: 206–526–6736; and e-mail: *yvonne.dereynier@noaa.gov*.

SUPPLEMENTARY INFORMATION:

Electronic Access

This final rule also is accessible via the Internet at the Office of the **Federal Register**'s website at *www.gpoaccess.gpo.gov/su__docs/aces/aces140.html* and at the NMFS Northwest Region website at *www.nwr.noaa.gov/1sustfsh/gfsh/gdfsh/gdfsh01.html*.

Background

On September 4, 2003, NMFS approved Amendment 17 to the Pacific Coast Groundfish Fishery Management Plan (FMP). Through Amendment 17, the FMP will now set groundfish harvest specifications and management measures via a biennial process. The first two-year management period will occur from January 1, 2005, through December 31, 2006. The Pacific Fishery Management Council (Council) made its final recommendation on 2005–2006 groundfish specifications and management measures at its June 2004 meeting in Foster City, CA. After receiving the Council's recommendations, NMFS will develop a proposed rule to implement the 2005–2006 specifications and management measures through a public notice-and-comment rulemaking process. The proposed rule, which is to be published in the **Federal Register**, will announce a public comment period and may be followed by a final rule, also published in the **Federal Register**.

NMFS expects that the rulemaking for the 2005–2006 Pacific Coast groundfish harvest specifications and management measures will result in revisions to the Pacific Coast groundfish regulations at 50 CFR part 660, subpart G. NMFS has reviewed its Federal groundfish regulations in anticipation of the need to incorporate the 2005–2006 specifications and management measures rulemaking into the overall Federal groundfish regulations at 50 CFR part 660, subpart G. As a result of this review, NMFS has determined that Federal groundfish regulations should be reorganized so that they are more logically arranged and better able to incorporate the broad array of regulatory measures included in a specifications and management measures package.

This final rule reorganizes Federal groundfish regulations at 50 CFR part 660, subpart G, so that: broadly applicable regulations, including definitions and prohibitions, are found in §§ 660.301–660.306; prohibitions in

§ 660.306 are arranged by topic, where possible; gear restrictions and monitoring programs are found in §§ 660.310–660.314; allocations are found in §§ 660.320–660.324; permit-related regulations are found in §§ 660.331–660.350; and regulations regarding the setting of harvest specifications and management measures are found in §§ 660.365–660.390. Regulations concerning Groundfish Conservation Areas (GCAs) have been moved to § 660.390 in anticipation of the need to codify Rockfish Conservation Area (RCA) boundaries, which include several hundred latitude-longitude coordinates. By placing these coordinates-laden regulations at the end of 50 CFR part 660, subpart G, NMFS will be able to codify the GCA boundaries without interrupting the narrative flow of the overall groundfish regulations. The only changes to regulatory text made via this action will: (1) Remove an outdated reference to a disconnected computerized hotline that has since been replaced with a website intended to provide inseason information on management actions in the Pacific whiting fisheries; and (2) refer readers of the West Coast groundfish regulations definitions at § 660.302 to nationwide definitions of fisheries regulatory terms at § 600.10 for individual terms that appear in both nationwide regulations and in the regulations specified to the groundfish fisheries.

The following table shows how NMFS has reorganized its West Coast groundfish regulations via this action:

Old Section (50 CFR part 660)	New Section (50 CFR part 660)
§ 660.301 *Purpose and scope*	§ 660.301 *Purpose and scope* (now includes what was § 660.304(d)(1))
§ 660.302 *Definitions*	§ 660.302 *Definitions* (now includes what was § 660.304(a), (b), (d)(2), and (d)(3))
§ 660.304 *Management areas, including conservation areas, and commonly used geographic coordinates.* Moved: § 660.304(a), (b), (d)(2) and (d)(3) moved to § 660.302; § 660.304(c) moved to § 660.390; § 660.304(d)(1) moved to § 660.301.	
§ 660.306 *Prohibitions*	§ 660.306 Prohibitions (paragraphs reorganized)
	§ 660.310 *Gear restrictions* New section, moved from § 660.322.
	§ 660.312 *Vessel Monitoring System (VMS) requirements* New section, moved from § 660.359.
	§ 660.314 *Groundfish observer program* New section, moved from § 660.360.
	§ 660.320 *Allocations* New section, moved from § 660.323(a)(4)(i)(B), (a)(4)(iii)-(vi), and from § 660.332.
§ 660.321 *Specifications and management measures* Moved to § 660.370	
§ 660.322 *Gear restrictions* Moved to § 660.310	
§ 660.323 *Catch restrictions* Moved: § 660.323(a) introductory text, (b), and (c) moved to § 660.370; § 660.323(a)(1) moved to § 660.371; § 660.323(a)(2) moved to § 660.372; § 660.323(a)(3), (a)(4)(i)(A), (a)(4)(ii) and (vii) moved to § 660.373; (a)(4)(i)(B), (iii), (iv), (v) and (vi) retained as § 660.323.	§ 660.323 *Pacific whiting allocations, allocation attainment, and inseason allocation reapportionment* Revised to retain language specific to whiting allocations at former § 660.323 (a)(4)(i)(B), (iii), (iv), (v) and (vi).
§ 660.332 *Allocations* Moved to § 660.320	
§ 660.359 *Vessel Monitoring System (VMS) requirements* Moved to § 660.312	
§ 660.360 *Groundfish observer program* Moved to § 660.314	
	§ 660.365 *Overfished Species Rebuilding Plans* New section, moved from § 660.370.
§ 660.370 *Overfished Species Rebuilding Plans* Moved to § 660.365	
	§ 660.370 *Catch Restrictions and Specifications and Management Measures* New section, moved from § 660.321 and § 660.323(a) introductory text, (b), and (c).
	§ 660.371 *Black Rockfish Fishery Management* New section, moved from § 660.323(a)(1)
	§ 660.372 *Fixed Gear Sablefish Fishery Management* New section, moved from § 660.323(a)(2)
	§ 660.373 *Pacific whiting (whiting) fishery management* New section, moved from § 660.323(a)(3), and (a)(4)(i)(A), (a)(4)(ii) and (vii).
	§ 660.390 *Groundfish Conservation Areas* New section, moved from § 660.304(c)

Revisions to Paperwork Reduction Act References in 15 CFR 902.1(b)

Section 3507(c)(B)(i) of the PRA requires that agencies inventory and display a current control number assigned by the Director, Office of Management and Budget (OMB), for each agency information collection. Section 902.1(b) identifies the location of NOAA regulations for which OMB approval numbers have been issued. Because this final rule reorganizes the codification of many recordkeeping and reporting requirements, 15 CFR 902.1(b) is revised to reference correctly the new sections resulting from the consolidation.

Classification

This action has been determined to be not significant for purposes of Executive Order 12866.

Pursuant to the Administrative Procedure Act (APA) at 5 U.S.C. 553 (d), the Assistant Administrator for Fisheries, NOAA, (AA), finds that a 30–day delay in effectiveness of this rule does not apply since this is a non-substantive rule.

Pursuant to 5 U.S.C. 553(b)(B), the AA finds good cause that waiving prior notice and public comment is unnecessary because this rule merely reorganizes and republishes the regulations in a more logical format, and in a way that anticipates that new

biennial regulations will be incorporated into these regulations beginning in 2005. With two exceptions, the contents of the regulations are unchanged. The exceptions make no material change in the regulations, and consist only of deleting an obsolete reference to a hotline that no longer exists, and adding references to nationwide definitions of some terms that also appear in these regulations.

The following collection-of-information requirements have already been approved by OMB for U.S. fishing activities:

a. *Approved under 0648–0243*--Survey of intent and capacity to harvest and process fish and shellfish, estimated at 5 minutes per response (§ 660.303).

b. *Approved under 0648–0305*--Gear identification requirements, estimated at 15 minutes per response (§ 660.310).

List of Subjects in 50 CFR Part 660

Administrative practice and procedure, American Samoa, Fisheries, Fishing, Guam, Hawaiian Natives, Indians, Northern Mariana Islands, Reporting and recordkeeping requirements.

Dated: July 7, 2004.

Rebecca Lent,

Deputy Assistant Administrator for Regulatory Programs, National Marine Fisheries Service.

■ For the reasons set out in the preamble, 50 CFR part 660 is amended as follows:

PART 660—FISHERIES OFF WEST COAST STATES AND IN THE WESTERN PACIFIC

■ 1. The authority citation for part 660 continues to read as follows:

Authority: 16 U.S.C. 1801 *et seq.*

■ 2. Section 660.301 is revised to read as follows:

§ 660.301 Purpose and scope.

(a) This subpart implements the Pacific Coast Groundfish Fishery Management Plan (PCGFMP) developed by the Pacific Fishery Management Council. This subpart governs groundfish fishing vessels of the U.S. in the EEZ off the coasts of Washington, Oregon, and California. All weights are in round weight or round-weight equivalents, unless specified otherwise.

(b) Any person fishing subject to this subpart is bound by the international boundaries described in this section, notwithstanding any dispute or negotiation between the U.S. and any neighboring country regarding their respective jurisdictions, until such time as new boundaries are established or recognized by the U.S.

■ 3. Section 660.302 is amended as follows:

A. In the definition for ''Fishing gear'', paragraphs (2) and (4) are revised, and paragraphs (9) through (22) are redesignated as paragraphs (10) through (23);

B. The definitions for ''Fishery management area,''Groundfish Conservation Area or GCA,'' ''Mobile transceiver unit,'' ''North-South management area,'' and ''Vessel monitoring system or VMS'' are revised;

C. The definition for ''Footrope'' is redesignated as new paragraph (9) under the definition for ''Fishing Gear''; and

D. The definitions of ''Allocation'', ''Catch, take, harvest'', ''Fishing'', ''Fishing vessel'', ''Operator'', ''Secretary'', ''Sell or sale'', ''Trip'', and ''Vessel of the United States, or U.S. vessel'' are added.

The additions and revisions read as follows:

§ 660.302 Definitions.

* * * * *

Allocation. (See § 660.10).

* * * * *

Catch, take, harvest. (See § 660.10).

* * * * *

Fishery management area means the EEZ off the coasts of Washington, Oregon, and California between 3 and 200 nm offshore, and bounded on the north by the Provisional International Boundary between the U.S. and Canada, and bounded on the south by the International Boundary between the U.S. and Mexico. The inner boundary of the fishery management area is a line coterminous with the seaward boundaries of the States of Washington, Oregon, and California (the ''3–mile limit''). The outer boundary of the fishery management area is a line drawn in such a manner that each point on it is 200 nm from the baseline from which the territorial sea is measured, or is a provisional or permanent international boundary between the U.S. and Canada or Mexico. All groundfish possessed between 0–200 nm offshore or landed in Washington, Oregon, or California are presumed to have been taken and retained from the EEZ, unless otherwise demonstrated by the person in possession of those fish.

Fishing. (See § 660.10).

Fishing gear ***

* * * * *

(2) *Bottom trawl.* A trawl in which the otter boards or the footrope of the net are in contact with the seabed. It includes roller (or bobbin) trawls, Danish and Scottish seine gear, and pair trawls fished on the bottom. Any trawl net not meeting the requirements for a pelagic trawl in § 660.310 is a bottom trawl.

* * * * *

(4) *Codend.* (See §§ 660.10 and 660.310(b)(4)).

* * * * *

Fishing vessel. (See § 660.10).

* * * * *

Groundfish Conservation Area or GCA means a geographic area defined by coordinates expressed in degrees latitude and longitude, created and enforced for the purpose of contributing to the rebuilding of overfished West Coast groundfish species. Specific GCAs area referred to or defined at § 660.390.

* * * * *

Mobile transceiver unit means a vessel monitoring system or VMS device, as set forth at § 660.312, installed on board a vessel that is used for vessel monitoring and transmitting the vessel's position as required by this subpart.

North-South management area means the management areas defined in paragraphs (1)(i) through (v) of this definition (Vancouver, Columbia, Eureka, Monterey Conception) or defined and bounded by one or more of the commonly used geographic coordinates set out in paragraphs (2)(i) through (xi) of this definition for the purposes of implementing different management measures in separate sections of the U.S. West Coast.

(1) *Management areas*--(i) *Vancouver.* (A) The northeastern boundary is that part of a line connecting the light on Tatoosh Island, WA, with the light on Bonilla Point on Vancouver Island, British Columbia (at 48°35′75″ N. lat., 124°43′00″ W. long.) south of the International Boundary between the U.S. and Canada (at 48° 29′37.19″ N. lat., 124°43′33.19″ W. long.), and north of the point where that line intersects with the boundary of the U.S. territorial sea.

(B) The northern and northwestern boundary is a line connecting the following coordinates in the order listed, which is the provisional international boundary of the EEZ as shown on NOAA/NOS Charts #18480 and #18007:

Point	N. Lat.	W. Long.
1	48°29′37.19″	124°43′33.19″
2	48°30′11″	124°47′13″
3	48°30′22″	124°50′21″
4	48°30′14″	124°54′52″
5	48°29′57″	124°59′14″
6	48°29′44″	125°00′06″
7	48°28′09″	125°05′47″
8	48°27′10″	125°08′25″
9	48°26′47″	125°09′12″
10	48°20′16″	125°22′48″
11	48°18′22″	125°29′58″

Point	N. Lat.	W. Long.
12	48°11′05″	125°53′48″
13	47°49′15″	126°40′57″
14	47°36′47″	127°11′58″
15	47°22′00″	127°41′23″
16	46°42′05″	128°51′56″
17	46°31′47″	129°07′39″

(C) The southern limit is 47°30′ N. lat.

(ii) *Columbia.* (A) The northern limit is 47°30′ N. lat.

(B) The southern limit is 43°00′ N. lat.

(iii) *Eureka.* (A) The northern limit is 43°00′ N. lat.

(B) The southern limit is 40°30′ N. lat.

(iv) *Monterey.* (A) The northern limit is 40°30′ N. lat.

(B) The southern limit is 36°00 N. lat.

(v) *Conception.* (A) The northern limit is 36°00′ N. lat.

(B) The southern limit is the U.S.-Mexico International Boundary, which is a line connecting the following coordinates in the order listed:

Point	N. Lat.	W. Long.
1	32°35′22″	117°27′49″
2	32°37′37″	117°49′31″
3	31°07′58″	118°36′18″
4	30°32′31″	121°51′58″

(2) *Commonly used geographic coordinates.* (i) Washington/Oregon border 4616′ N. lat.

(ii) Cape Falcon, OR--4546′ N. lat.

(iii) Cape Lookout, OR--4520′15″ N. lat.

(iv) Cape Blanco, OR--4250′ N. lat.

(v) Oregon/California border--4200′ N. lat.

(vi) Cape Mendocino, CA--4030′ N. lat.

(vii) North/South management line--4010′ N. lat.

(viii) Point Arena, CA--3857′30″ N. lat.

(ix) Point San Pedro, CA--3735′40″ N. lat.

(x) Point Lopez, CA--3600′ N. lat.

(xi) Point Conception, CA--3427′ N. lat.

* * * * *

Operator. (See § 660.10).

* * * * *

Secretary. (See § 660.10).

Sell or sale. (See § 660.10).

Scientific research activity. (See § 660.10).

* * * * *

Trip. (See § 660.10).

* * * * *

Vessel monitoring system or VMS means a vessel monitoring system or mobile transceiver unit as set forth in § 660.312 and approved by NMFS for use on vessels that take (directly or incidentally) species managed under the Pacific Coast Groundfish FMP, as required by this subpart.*Vessel of the United States or U.S. vessel.* (See § 660.10).

■ 4. In § 660.303, paragraphs (a) and (d)(2)are revised to read as follows:

§ 660.303 Reporting and recordkeeping.

(a) This subpart recognizes that catch and effort data necessary for implementing the PCGFMP are collected by the States of Washington, Oregon, and California under existing state data collection requirements. Telephone surveys of the domestic industry may be conducted by NMFS to determine amounts of whiting that may be available for reallocation under 50 CFR 660.323(c). No Federal reports are required of fishers or processors, so long as the data collection and reporting systems operated by state agencies continue to provide NMFS with statistical information adequate for management.

* * * * *

(d) * * *

(2) Declaration reports for non-trawl vessels intending to fish in a conservation area. The operator of any vessel registered to a limited entry permit with a longline or pot endorsement must provide NMFS OLE with a declaration report, as specified at paragraph (d)(5) of this section, to identify the intent to fish within the CCA, as defined at § 660.390, or any non-trawl RCA, as defined in the groundfish annual management measures that are published in the **Federal Register**.

* * * * *

§ 660.304 [Removed]

■ 5. Remove § 660.304.

■ 6. Section 660.306 is revised to read as follows:

§ 660.306 Prohibitions.

In addition to the general prohibitions specified in § 600.725 of this chapter, it is unlawful for any person to:

(a) *General.* (1) Sell, offer to sell, or purchase any groundfish taken in the course of recreational groundfish fishing.

(2) Retain any prohibited species (defined in § 660.302 and restricted in § 660.370(e)) caught by means of fishing gear authorized under this subpart or unless authorized by part 600 of this chapter. Prohibited species must be returned to the sea as soon as practicable with a minimum of injury when caught and brought on board.

(3) Falsify or fail to affix and maintain vessel and gear markings as required by § 660.305 or § 660.310.

(4) Fish for groundfish in violation of any terms or conditions attached to an EFP under § 600.745 of this chapter or § 660.350.

(5) Fish for groundfish using gear not authorized under § 660.310 or in violation of any terms or conditions attached to an EFP under § 660.350 or part 600 of this chapter.

(6) Take and retain, possess, or land more groundfish than specified under §§ 660.370 through 660.373, or under an EFP issued under § 660.350 or part 600 of this chapter.

(7) Fail to sort, prior to the first weighing after offloading, those groundfish species or species groups for which there is a trip limit, size limit, quota, or harvest guideline, if the vessel fished or landed in an area during a time when such trip limit, size limit, harvest guideline or quota applied.

(8) Possess, deploy, haul, or carry onboard a fishing vessel subject to this subpart a set net, trap or pot, longline, or commercial vertical hook-and-line that is not in compliance with the gear restrictions in § 660.310, unless such gear is the gear of another vessel that has been retrieved at sea and made inoperable or stowed in a manner not capable of being fished. The disposal at sea of such gear is prohibited by Annex V of the International Convention for the Prevention of Pollution From Ships, 1973 (Annex V of MARPOL 73/78).

(9) Refuse to submit fishing gear or fish subject to such person's control to inspection by an authorized officer, or to interfere with or prevent, by any means, such an inspection.

(10) Take, retain, possess, or land more than a single cumulative limit of a particular species, per vessel, per applicable cumulative limit period, except for sablefish taken in the primary limited entry, fixed gear sablefish season from a vessel authorized under § 660.372(a) to participate in that season, as described at § 660.372(b).

(11) Take and retain, possess, or land groundfish in excess of the landing limit for the open access fishery without having a valid limited entry permit for the vessel affixed with a gear endorsement for the gear used to catch the fish.

(b) *Reporting and recordkeeping.*(1) Falsify or fail to make and/or file, retain or make available any and all reports of groundfish landings, containing all data, and in the exact manner, required by the applicable State law, as specified in § 660.303, provided that person is required to do so by the applicable state law.

(2) Fail to retain on board a vessel from which groundfish is landed, and provide to an authorized officer upon

request, copies of any and all reports of groundfish landings, or receipts containing all data, and made in the exact manner required by the applicable state law throughout the cumulative limit period during which such landings occurred and for 15 days thereafter.

(c) *Limited entry fisheries.* (1) Fish with groundfish trawl gear, or carry groundfish trawl gear on board a vessel that also has groundfish on board, without having a limited entry permit valid for that vessel affixed with a gear endorsement for trawl gear, with the following exception. A vessel with groundfish on board may carry groundfish trawl gear if:

(i) The vessel is in continuous transit from outside the fishery management area to a port in Washington, Oregon, or California; or

(ii) The vessel is a mothership, in which case trawl nets and doors must be stowed in a secured and covered manner, and detached from all towing lines, so as to be rendered unusable for fishing.

(2) Carry on board a vessel, or deploy, limited entry gear when the limited entry fishery for that gear is closed, except a vessel may carry on board limited entry gear as provided in paragraph (c)(1) of this section.

(d) *Black rockfish fisheries.* Have onboard a commercial hook-and-line fishing vessel (other than a vessel operated by persons under § 660.370(c)(1)(ii), more than the amount of the trip limit set for black rockfish by § 660.371 while that vessel is fishing between the U.S.-Canada border and Cape Alava (48°09′30″ N. lat.), or between Destruction Island (47°40′00″ N. lat.) and Leadbetter Point (46°38′10″ N. lat.).

(e) *Sablefish fisheries.* Take, retain, possess or land sablefish under the cumulative limits provided for the primary limited entry, fixed gear sablefish season, described in § 660.372, from a vessel that is not registered to a limited entry permit with a sablefish endorsement.

(f) *Pacific whiting fisheries.* (1) Process whiting in the fishery management area during times or in areas where at-sea processing is prohibited for the sector in which the vessel participates, unless:

(i) The fish are received from a member of a Pacific Coast treaty Indian tribe fishing under § 660.324;

(ii) The fish are processed by a waste-processing vessel according to § 660.373(i); or

(iii) The vessel is completing processing of whiting taken on board during that vessel's primary season.

(2) Take and retain or receive, except as cargo or fish waste, whiting on a vessel in the fishery management area that already possesses processed whiting on board, during times or in areas where at-sea processing is prohibited for the sector in which the vessel participates, unless the fish are received from a member of a Pacific Coast treaty Indian tribe fishing under § 660.324.

(3) Participate in the mothership or shoreside sector as a catcher vessel that does not process fish, if that vessel operates in the same calendar year as a catcher/processor in the whiting fishery, according to § 660.373(h)(2).

(4) Operate as a waste-processing vessel within 48 hours of a primary season for whiting in which that vessel operates as a catcher/processor or mothership, according to § 660.373(i).

(5) Fail to keep the trawl doors on board the vessel and attached to the trawls on a vessel used to fish for whiting, when taking and retention is prohibited under § 660.373(f).

(g) *Limited entry permits.* (1) Fail to carry on board a vessel the limited entry permit registered for use with that vessel, if a limited entry permit is registered for use with that vessel.

(2) Make a false statement on an application for issuance, renewal, transfer, vessel registration, or replacement of a limited entry permit.

(h) *Fishing in conservation areas.* (1) Fish with any trawl gear, including exempted gear used to take pink shrimp, ridgeback prawns, California halibut south of Pt. Arena, CA, and sea cucumber; or with trawl gear from a tribal vessel or with any gear from a vessel registered to a groundfish limited entry permit in a conservation area unless the vessel owner or operator has a valid declaration confirmation code or receipt for fishing in a conservation area as specified at § 660.303(d)(5).

(2) Operate any vessel registered to a limited entry permit with a trawl endorsement and trawl gear on board in a Trawl Rockfish Conservation Area or a Cowcod Conservation Area (as defined at § 660.302), except for purposes of continuous transiting, with all groundfish trawl gear stowed in accordance with § 660.310(b)(7), or except as authorized in the annual or biennial groundfish management measures published in the **Federal Register**.

(3) Operate any vessel registered to a limited entry permit with a longline or trap (pot) endorsement and longline and/or trap gear onboard in a Nontrawl Rockfish Conservation Area or a Cowcod Conservation Area (as defined at § 660.302), except for purposes of continuous transiting, or except as authorized in the annual or biennial groundfish management measures published in the **Federal Register**.

(i) *Groundfish observer program.* (1) Forcibly assault, resist, oppose, impede, intimidate, harass, sexually harass, bribe, or interfere with an observer.

(2) Interfere with or bias the sampling procedure employed by an observer, including either mechanically or physically sorting or discarding catch before sampling.

(3) Tamper with, destroy, or discard an observer's collected samples, equipment, records, photographic film, papers, or personal effects without the express consent of the observer.

(4) Harass an observer by conduct that:

(i) Has sexual connotations,

(ii) Has the purpose or effect of interfering with the observer's work performance, and/or

(iii) Otherwise creates an intimidating, hostile, or offensive environment. In determining whether conduct constitutes harassment, the totality of the circumstances, including the nature of the conduct and the context in which it occurred, will be considered. The determination of the legality of a particular action will be made from the facts on a case-by-case basis.

(5) Fish for, land, or process fish without observer coverage when a vessel is required to carry an observer under § 660.314(c).

(6) Require, pressure, coerce, or threaten an observer to perform duties normally performed by crew members, including, but not limited to, cooking, washing dishes, standing watch, vessel maintenance, assisting with the setting or retrieval of gear, or any duties associated with the processing of fish, from sorting the catch to the storage of the finished product.

(7) Fail to provide departure or cease fishing reports specified at § 660.312(c)(2).

(8) Fail to meet the vessel responsibilities specified at § 660.312(d).

(j) *Vessel monitoring systems.* (1) Use any vessel registered to a limited entry permit to operate in State or Federal waters seaward of the baseline from which the territorial sea is measured off the States of Washington, Oregon or California, unless that vessel carries a NMFS OLE type-approved mobile transceiver unit and complies with the requirements described at § 660.312.

(2) Fail to install, activate, repair or replace a mobile transceiver unit prior to leaving port as specified at § 660.312.

(3) Fail to operate and maintain a mobile transceiver unit on board the vessel at all times as specified at § 660.312.

(4) Tamper with, damage, destroy, alter, or in any way distort, render useless, inoperative, ineffective, or inaccurate the VMS, mobile transceiver unit, or VMS signal required to be installed on or transmitted by a vessel as specified at § 660.312.

(5) Fail to contact NMFS OLE or follow NMFS OLE instructions when automatic position reporting has been interrupted as specified at § 660.312.

(6) Register a VMS transceiver unit registered to more than one vessel at the same time.

§ 660.322 [Redesignated as § 660.310 and Amended]

■ 7. Section 660.322 is redesignated as § 660.310 and newly redesignated section heading and paragraph (b)(5) are revised to read as follows:

§ 660.310 Gear restrictions and gear identification.

* * * * *

(b) * * *

(5) *Large and small footrope trawl gear.* Large footrope gear is bottom trawl gear, as specified at § 660.302, with a footrope diameter larger than 8 inches (20 cm) (including rollers, bobbins or other material encircling or tied along the length of the footrope.) Small footrope trawl gear is bottom trawl gear, as specified at § 660.302 and herein at paragraph (b) of this section, with a footrope diameter of 8 inches (20 cm) or smaller (including rollers, bobbins or other material encircling or tied along the length of the footrope). Chafing gear may be used only on the last 50 meshes of a small footrope trawl, measured from the terminal (closed) end of the codend. Other lines or ropes that run parallel to the footrope may not be augmented to violate the footrope size restrictions. For enforcement purposes, the footrope will be measured in a straight line from the outside edge to the opposite outside edge at the widest part on any individual part, including any individual disk, roller, bobbin, or any other device.

* * * * *

■ 8. Section 660.359 is redesignated as § 660.312, and newly redesignated § 660.312 is amended in paragraph (d)(7) by removing the words ''U.S. Coast Guard'' and adding in their place ''USCG,'' and paragraphs (d)(4) introductory text and (d)(4)(iv) are revised to read as follows:

§ 660.312 Vessel Monitoring System (VMS) requirements.

* * * * *

(d) * * *

(4) *VMS exemptions.* A vessel that is required to operate the mobile transceiver unit continuously 24 hours a day throughout the calendar year maybe exempted from this requirement if a valid exemption report, as described at paragraph (d)(4)(iii) of this section, is received by NMFS OLE and the vessel is in compliance with all conditions and requirements of the VMS exemption identified in this section.

* * * * *

(iv) Exemption reports must be received by NMFS at least 2 hours and not more than 24 hours before the exempted activities defined at paragraph (d)(4)(i) and (ii) of this section occur. An exemption report is valid until NMFS receives a report canceling the exemption. An exemption cancellation must be received at least 2 hours before the vessel re-enters the EEZ following an outside areas exemption or at least 2 hours before the vessel is placed back in the water following a haul out exemption.

* * * * *

§ 660.360 [Redesignated as § 660.314 and Amended]

■ 9. Section 660.360 is redesignated as § 660.314, and newly designated § 660.314 is amended as follows:

A. In paragraph (c)(2)(ii), remove the words ''Pacific Coast Groundfish Fishery Management Plan'' and add in their place ''PCGFMP'';

B. In paragraph (d)(2), remove the words ''U.S. Coast Guard'' and add in their place ''USCG''; and

C. In paragraph (d)(3)(i), remove the words ''United States'' and add in their place ''U.S.''.

§ 660.332 [Redesignated as § 660.320]

■ 10. Section 660.332 is redesignated as § 660.320.

■ 11. Section 660.323 is revised to read as follows:

§ 660.323 Pacific whiting allocations, allocation attainment, and inseason allocation reapportionment.

(a) *Allocations.* The commercial harvest guideline for whiting is allocated among three sectors, as follows: 34 percent for the catcher/processor sector; 24 percent for the mothership sector; and 42 percent for the shoreside sector. No more than 5 percent of the shoreside allocation may be taken and retained south of 42° N. lat. before the start of the primary season north of 42° N. lat. These allocations are harvest guidelines unless otherwise announced in the **Federal Register**.

(b) *Reaching an allocation.* If the whiting harvest guideline, commercial harvest guideline, or a sector's allocation is reached, or is projected to be reached, the following action(s) for the applicable sector(s) may be taken as provided under paragraph (e) of this section and will remain in effect until additional amounts are made available the next fishing year or under paragraph (e) of this section.

(1) *Catcher/processor sector.* Further taking and retaining, receiving, or at-sea processing of whiting by a catcher/processor is prohibited. No additional unprocessed whiting may be brought on board after at-sea processing is prohibited, but a catcher/processor may continue to process whiting that was on board before at-sea processing was prohibited.

(2) *Mothership sector.* Further receiving or at-sea processing of whiting by a mothership is prohibited. No additional unprocessed whiting may be brought on board after at-sea processing is prohibited, but a mothership may continue to process whiting that was on board before at-sea processing was prohibited. Whiting may not be taken and retained, possessed, or landed by a catcher vessel participating in the mothership sector.

(3) *Shoreside sector.* Whiting may not be taken and retained, possessed, or landed by a catcher vessel participating in the shoreside sector except as authorized under a trip limit specified under § 660.370(c).

(4) *Shoreside south of 42° N. lat.* If 5 percent of the shoreside allocation for whiting is taken and retained south of 42° N. lat. before the primary season for the shoreside sector begins north of 42° N. lat., then a trip limit specified under § 660.370(c) may be implemented south of 42° N. lat. until the northern primary season begins, at which time the southern primary season would resume.

(c) *Reapportionments.* That portion of a sector's allocation that the Regional Administrator determines will not be used by the end of the fishing year shall be made available for harvest by the other sectors, if needed, in proportion to their initial allocations, on September 15 or as soon as practicable thereafter. NMFS may release whiting again at a later date to ensure full utilization of the resource. Whiting not needed in the fishery authorized under § 660.324 may also be made available.

(d) *Estimates.* Estimates of the amount of whiting harvested will be based on actual amounts harvested, projections of amounts that will be harvested, or a combination of the two. Estimates of the

amount of Pacific whiting that will be used by shoreside processors by the end of the fishing year will be based on the best information available to the Regional Administrator from state catch and landings data, the survey of domestic processing capacity and intent, testimony received at Council meetings, and/or other relevant information.

(e) *Announcements.* The Assistant Administrator will announce in the **Federal Register** when a harvest guideline, commercial harvest guideline, or an allocation of whiting is reached, or is projected to be reached, specifying the appropriate action being taken under paragraph (b) of this section. The Regional Administrator will announce in the **Federal Register** any reapportionment of surplus whiting to others sectors on September 15, or as soon as practicable thereafter. In order to prevent exceeding the limits or to avoid underutilizing the resource, prohibitions against further taking and retaining, receiving, or at-sea processing of whiting, or reapportionment of surplus whiting may be made effective immediately by actual notice to fishermen and processors, by e-mail, internet (*www.nwr.noaa.gov/lsustfsh/groundfish/whiting__mgt.htm*), phone, fax, letter, press release, and/or USCG Notice to Mariners (monitor channel 16 VHF), followed by publication in the **Federal Register**, in which instance public comment will be sought for a reasonable period of time thereafter. If insufficient time exists to consult with the Council, the Regional Administrator will inform the Council in writing of actions taken.

■ 12. In § 660.334, paragraphs (b), (c)(1)(i), and (d)(1) are revised to read as follows:

§ 660.334 Limited entry permits – endorsements.

* * * * *

(b) *Gear endorsements.* There are three types of gear endorsements: trawl, longline and pot (trap). When limited entry permits were first issued, some vessel owners qualified for more than one type of gear endorsement based on the landings history of their vessels. Each limited entry permit has one or more gear endorsement(s). Gear endorsement(s) assigned to the permit at the time of issuance will be permanent and shall not be modified. While participating in the limited entry fishery, the vessel registered to the limited entry permit is authorized to fish the gear(s) endorsed on the permit. While participating in the limited entry, primary fixed gear fishery for sablefish described at § 660.372, a vessel registered to more than one limited entry permit is authorized to fish with any gear, except trawl gear, endorsed on at least one of the permits registered for use with that vessel. During the limited entry fishery, permit holders may also fish with open access gear; except that vessels fishing against primary sablefish season cumulative limits described at § 660.372(b)(3) may not fish with open access gear against those limits.

* * * * *

(c) * * *

(1) * * *

(i) If the permit is registered for use with a trawl vessel that is more than 5 ft (1.52 m) shorter than the size for which the permit is endorsed, it will be endorsed for the size of the smaller vessel. This requirement does not apply to a permit with a sablefish endorsement that is endorsed for both trawl and either longline or pot gear and which is registered for use with a longline or pot gear vessel for purposes of participating in the limited entry primary fixed gear sablefish fishery described at § 660.372.

* * * * *

(d) * * *

(1) *General.* Participation in the limited entry fixed gear sablefish fishery during the primary season described in § 660.372 north of 36° N. lat., requires that an owner of a vessel hold (by ownership or lease) a limited entry permit, registered for use with that vessel, with a longline or trap (or pot) endorsement and a sablefish endorsement. Up to three permits with sablefish endorsements may be registered for use with a single vessel. Limited entry permits with sablefish endorsements are assigned to one of three different cumulative trip limit tiers, based on the qualifying catch history of the permit.

* * * * *

■ 13. In § 660.335, paragraph (c) is revised to read as follows:

§ 660.335 Limited entry permits – renewal, combination, stacking, change of permit ownership or permit holdership, and transfer.

* * * * *

(c) *''Stacking'' Limited Entry Permits.* ''Stacking'' limited entry permits refers to the practice of registering more than one permit for use with a single vessel. Only limited entry permits with sablefish endorsements may be ''stacked.'' Up to three limited entry permits with sablefish endorsements may be registered for use with a single vessel during the primary sablefish season described at § 660.372(b). Privileges, responsibilities, and restrictions associated with stacking permits to participate in the primary sablefish fishery are described at § 660.372 and at § 660.334(d).

* * * * *

■ 14. In § 660.350, paragraph (a)(6) is revised to read as follows:

§ 660.350 Compensation with fish for collecting resource information--exempted fishing permits off Washington, Oregon, and California.

* * * * *

(a) * * *

(6) *Accounting for the compensation catch.* As part of the harvest specifications process (§ 660.370), NMFS will advise the Council of the amount of fish authorized to be retained under a compensation EFP, which then will be deducted from the next harvest specifications (ABCs) set by the Council. Fish authorized in an EFP too late in the year to be deducted from the following year's ABCs will be accounted for in the next management cycle where it is practicable to do so.

* * * * *

§ 660.370 [Redesignated as § 660.365]

■ 15. Section 660.370 is redesignated as § 660.365.

■ 16. A new § 660.370 is added to read as follows:

§ 660.370 Specifications and management measures.

(a) *General.* NMFS will establish and adjust specifications and management measures biennially or annually and during the fishing year. Management of the Pacific Coast groundfish fishery will be conducted consistent with the standards and procedures in the PCGFMP and other applicable law. The PCGFMP is available from the Regional Administrator or the Council.

(b) *Biennial actions.* The Pacific Coast Groundfish fishery is managed on a biennial, calendar year basis. Harvest specifications and management measures will be announced biennially, with the harvest specifications for each species or species group set for two sequential calendar years. In general, management measures are designed to achieve, but not exceed, the specifications, particularly optimum yields (harvest guidelines and quotas), commercial harvest guidelines and quotas, limited entry and open access allocations, or other approved fishery allocations, and to protect overfished and depleted stocks.

(c) *Routine management measures.* In addition to the catch restrictions in §§ 660.371 through 660.373, other catch restrictions that are likely to be adjusted on a biennial or more frequent basis

may be imposed and announced by a single notification in the **Federal Register** if good cause exists under the APA to waive notice and comment, and if they have been designated as routine through the two-meeting process described in the PCGFMP. The following catch restrictions have been designated as routine:

(1) *Commercial limited entry and open access fisheries–*

(i) *Trip landing and frequency limits, size limits, all gear.* Trip landing and frequency limits have been designated as routine for the following species or species groups: widow rockfish, canary rockfish, yellowtail rockfish, Pacific ocean perch, yelloweye rockfish, splitnose rockfish, bocaccio, cowcod, minor nearshore rockfish or shallow and deeper minor nearshore rockfish, shelf or minor shelf rockfish, and minor slope rockfish; DTS complex which is composed of Dover sole, sablefish, shortspine thornyheads, and longspine thornyheads; petrale sole, rex sole, arrowtooth flounder, Pacific sanddabs, and the flatfish complex, which is composed of those species plus any other flatfish species listed at § 660.302; Pacific whiting; lingcod; and ''other fish'' as a complex consisting of all groundfish species listed at § 660.302 and not otherwise listed as a distinct species or species group. Size limits have been designated as routine for sablefish and lingcod. Trip landing and frequency limits and size limits for species with those limits designated as routine may be imposed or adjusted on a biennial or more frequent basis for the purpose of keeping landings within the harvest levels announced by NMFS, and for the other purposes given in paragraphs (c)(1)(i)(A) and (B) of this section.

(A) *Trip landing and frequency limits.* To extend the fishing season; to minimize disruption of traditional fishing and marketing patterns; to reduce discards; to discourage target fishing while allowing small incidental catches to be landed; to protect overfished species; to allow small fisheries to operate outside the normal season; and, for the open access fishery only, to maintain landings at the historical proportions during the 1984–88 window period.

(B) *Size limits.* To protect juvenile fish; to extend the fishing season.

(ii) *Differential trip landing and frequency limits based on gear type, closed seasons.* Trip landing and frequency limits that differ by gear type and closed seasons may be imposed or adjusted on a biennial or more frequent basis for the purpose of rebuilding and protecting overfished or depleted stocks.

(2) *Recreational fisheries all gear types.* Routine management measures for all groundfish species, separately or in any combination, include bag limits, size limits, time/area closures, boat limits, hook limits, and dressing requirements. All routine management measures on recreational fisheries are intended to keep landings within the harvest levels announced by NMFS, to rebuild and protect overfished or depleted species, and to maintain consistency with State regulations, and for the other purposes set forth in this section.

(i) *Bag limits.* To spread the available catch over a large number of anglers; to protect and rebuild overfished species; to avoid waste.

(ii) *Size limits.* To protect juvenile fish; to protect and rebuild overfished species; to enhance the quality of the recreational fishing experience.

(iii) *Season duration restrictions.* To spread the available catch over a large number of anglers; to protect and rebuild overfished species; to avoid waste; to enhance the quality of the recreational fishing experience.

(3) *All fisheries, all gear types depth-based management measures.* Depth-based management measures, particularly the setting of closed areas known as Groundfish Conservation Areas may be imposed on any sector of the groundfish fleet using specific boundary lines that approximate depth contours with latitude/longitude waypoints. Depth-based management measures and the setting of closed areas may be used to protect and rebuild overfished stocks.

(d) *Changes to the regulations.* Regulations under this subpart may be promulgated, removed, or revised. Any such action will be made according to the framework standards and procedures in the PCGFMP and other applicable law, and will be published in the **Federal Register**.

(e) *Prohibited species.* Groundfish species or species groups under the PCGFMP for which quotas have been achieved and/or the fishery closed are prohibited species. In addition, the following are prohibited species:

(1) Any species of salmonid.

(2) Pacific halibut.

(3) Dungeness crab caught seaward of Washington or Oregon.

(f) *Applicability.* Groundfish species harvested in the territorial sea (0–3 nm) will be counted toward the catch limitations in §§660.370–660.373.

■ 17. Section 660.371 is added to read as follows:

§ 660.371 Black rockfish fishery management.

The trip limit for black rockfish (*Sebastes melanops*) for commercial fishing vessels using hook-and-line gear between the U.S.-Canada border and Cape Alava (48°09′30″ N. lat.), and between Destruction Island (47°40′ N. lat.) and Leadbetter Point (46°38′10″ N. lat.), is 100 lbs (45 kg) or 30 percent, by weight of all fish on board, whichever is greater, per vessel per fishing trip.

■ 18. Section 660.372 is added to read as follows:

§ 660.372 Fixed gear sablefish fishery management.

This section applies to the primary season for the fixed gear limited entry sablefish fishery north of 36° N. lat., except for paragraph (c), of this section, which also applies to the open access fishery north of 36° N. lat. Limited entry and open access fixed gear sablefish fishing south of 36° N. lat. is governed by routine management measures imposed under § 660.370 (c).

(a) *Sablefish endorsement.* A vessel may not participate in the primary season for the fixed gear limited entry fishery, unless at least one limited entry permit with both a gear endorsement for longline or trap (or pot) gear and a sablefish endorsement is registered for use with that vessel. Permits with sablefish endorsements are assigned to one of three tiers, as described at § 660.334(d).

(b) *Primary season limited entry, fixed gear sablefish fishery– (1) Season dates.* North of 36° N. lat., the primary sablefish season for limited entry, fixed gear vessels begins at 12 noon l.t. on April 1 and ends at 12 noon l.t. on October 31, unless otherwise announced by the Regional Administrator.

(2) *Gear type.* During the primary season and when fishing against primary season cumulative limits, each vessel authorized to participate in that season under paragraph (a) of this section may fish for sablefish with any of the gear types, except trawl gear, endorsed on at least one of the permits registered for use with that vessel.

(3) *Cumulative limits.* (i) A vessel participating in the primary season will be constrained by the sablefish cumulative limit associated with each of the permits registered for use with that vessel. The Regional Administrator will biennially or annually calculate the size of the cumulative trip limit for each of the three tiers associated with the sablefish endorsement such that the ratio of limits between the tiers is approximately 1:1.75:3.85 for Tier 3:Tier 2:Tier 1, respectively. The size of the cumulative trip limits will vary

depending on the amount of sablefish available for the primary fishery and on estimated discard mortality rates within the fishery. The size of the cumulative trip limits for the three tiers in the primary fishery will be announced in the **Federal Register**.

(ii) During the primary season, each vessel authorized to participate in that season under paragraph (a) of this section may take, retain, possess, and land sablefish, up to the cumulative limits for each of the permits registered for use with that vessel. If multiple limited entry permits with sablefish endorsements are registered for use with a single vessel, that vessel may land up to the total of all cumulative limits announced in the **Federal Register** for the tiers for those permits, except as limited by paragraph (b)(3)(iii) of this section. Up to 3 permits may be registered for use with a single vessel during the primary season; thus, a single vessel may not take and retain, possess or land more than 3 primary season sablefish cumulative limits in any one year. A vessel registered for use with multiple limited entry permits is subject to per vessel limits for species other than sablefish, and to per vessel limits when participating in the daily trip limit fishery for sablefish under paragraph (c) of this section.

(iii) If a permit is registered to more than one vessel during the primary season in a single year, the second vessel may only take the portion of the cumulative limit for that permit that has not been harvested by the first vessel to which the permit was registered. The combined primary season sablefish landings for all vessels registered to that permit may not exceed the cumulative limit for the tier associated with that permit.

(iv) A cumulative trip limit is the maximum amount of sablefish that may be taken and retained, possessed, or landed per vessel in a specified period of time, with no limit on the number of landings or trips.

(c) *Limited entry and open access daily trip limit fisheries.* (1) Before the start of the primary season, all sablefish landings made by a vessel authorized under paragraph (a) of this section to participate in the primary season will be subject to the restrictions and limits of the limited entry daily trip limit fishery for sablefish, which is governed by routine management measures imposed under § 660.370(c).

(2) Following the start of the primary season, all landings made by a vessel authorized under paragraph (a) of this section to participate in the primary season will count against the primary season cumulative limit(s) associated with the permit(s) registered for use with that vessel. Once a vessel has reached its total cumulative allowable sablefish landings for the primary season under paragraph (b)(3) of this section, any subsequent sablefish landings by that vessel will be subject to the restrictions and limits of the limited entry daily trip limit fishery for sablefish for the remainder of the calendar year.

(3) Vessels registered for use with a limited entry, fixed gear permit that does not have a sablefish endorsement may participate in the limited entry, daily trip limit fishery for as long as that fishery is open during the year, subject to routine management measures imposed under § 660.370.

(4) Open access vessels may participate in the open access, daily trip limit fishery for as long as that fishery is open during the year, subject to the routine management measures imposed under § 660.370(c).

(d) *Trip limits.* Trip and/or frequency limits may be imposed in the limited entry fishery on vessels that are not participating in the primary season under § 660.370(c). Trip and/or size limits to protect juvenile sablefish in the limited entry or open-access fisheries also may be imposed at any time under § 660.370(c). Trip limits may be imposed in the open-access fishery at any time under § 660.370(c).

■ 19. Section 660.373 is added to read as follows:

§ 660.373 Pacific whiting (whiting) fishery management.

(a) *Sectors.* The catcher/processor sector is composed of catcher/processors, which are vessels that harvest and process whiting during a calendar year. The mothership sector is composed of motherships and catcher vessels that harvest whiting for delivery to motherships. Motherships are vessels that process, but do not harvest, whiting during a calendar year. The shoreside sector is composed of vessels that harvest whiting for delivery to shore-based processors.

(b) *Seasons.* The primary seasons for the whiting fishery are: For the shore-based sector, the period(s) when the large-scale target fishery is conducted (when trip limits under paragraph (b) of this section are not in effect); for catcher/processors, the period(s) when at-sea processing is allowed and the fishery is open for the catcher/processor sector; and for vessels delivering to motherships, the period(s) when at-sea processing is allowed and the fishery is open for the mothership sector. Before and after the primary seasons, trip landing or frequency limits may be imposed under § 660.370(c). The sectors are defined at § 660.370(a).

(1) *North of 40°30′ N. lat.* Different starting dates may be established for the catcher/processor sector, the mothership sector, catcher vessels delivering to shoreside processors north of 42° N. lat., and catcher vessels delivering to shoreside processors between 42°-40°30′ N. lat.

(i) *Procedures.* The primary seasons for the whiting fishery north of 40°30′ N. lat. generally will be established according to the procedures of the PCGFMP for developing and implementing harvest specifications and apportionments. The season opening dates remain in effect unless changed, generally with the harvest specifications and management measures.

(ii) *Criteria.* The start of a primary season may be changed based on a recommendation from the Council and consideration of the following factors, if applicable: Size of the harvest guidelines for whiting and bycatch species; age/size structure of the whiting population; expected harvest of bycatch and prohibited species; availability and stock status of prohibited species; expected participation by catchers and processors; environmental conditions; timing of alternate or competing fisheries; industry agreement; fishing or processing rates; and other relevant information.

(2) *South of 40°30′ N. lat.* The primary season starts on April 15 south of 40°30′ N. lat.

(c) *Closed areas.* Pacific whiting may not be taken and retained in the following portions of the fishery management area:

(1) *Klamath River Salmon Conservation Zone.* The ocean area surrounding the Klamath River mouth bounded on the north by 41°38′48″ N. lat. (approximately 6 nm north of the Klamath River mouth), on the west by 124°23′ W. long. (approximately 12 nm from shore), and on the south by 41°26′48″ N. lat. (approximately 6 nm south of the Klamath River mouth).

(2) *Columbia River Salmon Conservation Zone.* The ocean area surrounding the Columbia River mouth bounded by a line extending for 6 nm due west from North Head along 46°18′ N. lat. to 124°13′18″ W. long., then southerly along a line of 167 True to 46°11′06″ N. lat. and 124°11′ W. long. (Columbia River Buoy), then northeast along Red Buoy Line to the tip of the south jetty.

(d) *Eureka area trip limits.* Trip landing or frequency limits may be established, modified, or removed under § 660.370 or § 660.373, specifying the amount of Pacific whiting that may be

taken and retained, possessed, or landed by a vessel that, at any time during a fishing trip, fished in the fishery management area shoreward of the 100–fathom (183–m) contour (as shown on NOAA Charts 18580, 18600, and 18620) in the Eureka area (from 43°00′ to 40°30′ N. lat.).

(e) *At-sea processing.* Whiting may not be processed at sea south of 42°00′ N. lat. (Oregon-California border), unless by a waste-processing vessel as authorized under paragraph (i) of this section.

(f) *Time of day.* Pacific whiting may not be taken and retained by any vessel in the fishery management area south of 42°00′ N. lat. between 0001 hours to one-half hour after official sunrise (local time). During this time south of 42°00′ N. lat., trawl doors must be on board any vessel used to fish for whiting and the trawl must be attached to the trawl doors. Official sunrise is determined, to the nearest 5° lat., in The Nautical Almanac issued annually by the Nautical Almanac Office, U.S. Naval Observatory, and available from the U.S. Government Printing Office.

(g) *Bycatch reduction and full utilization program for at-sea processors (optional).* If a catcher/processor or mothership in the whiting fishery carries more than one NMFS-approved observer for at least 90 percent of the fishing days during a cumulative trip limit period, then groundfish trip limits may be exceeded without penalty for that cumulative trip limit period, if the conditions in paragraph (g)(1) of this section are met. For purposes of this program, ''fishing day'' means a 24–hour period, from 0001 hours through 2400 hours, local time, in which fishing gear is retrieved or catch is received by the vessel, and will be determined from the vessel's observer data, if available. Changes to the number of observers required for a vessel to participate in the program will be announced prior to the start of the fishery, generally concurrent with the harvest specifications and management measures. Groundfish consumed on board the vessel must be within any applicable trip limit and recorded as retained catch in any applicable logbook or report. [Note: For a mothership, non-whiting groundfish landings are limited by the cumulative landings limits of the catcher vessels delivering to that mothership.]

(1) *Conditions.* Conditions for participating in the voluntary full utilization program are as follows:

(i) All catch must be made available to the observers for sampling before it is sorted by the crew.

(ii) Any retained catch in excess of cumulative trip limits must either be: Converted to meal, mince, or oil products, which may then be sold; or donated to a bona fide tax-exempt hunger relief organization (including food banks, food bank networks or food bank distributors), and the vessel operator must be able to provide a receipt for the donation of groundfish landed under this program from a tax-exempt hunger relief organization immediately upon the request of an authorized officer.

(iii) No processor or catcher vessel may receive compensation or otherwise benefit from any amount in excess of a cumulative trip limit unless the overage is converted to meal, mince, or oil products. Amounts of fish in excess of cumulative trip limits may only be sold as meal, mince, or oil products.

(iv) The vessel operator must contact the NMFS enforcement office nearest to the place of landing at least 24 hours before landing groundfish in excess of cumulative trip limits for distribution to a hunger relief agency. Cumulative trip limits and a list of NMFS enforcement offices are found on the NMFS, Northwest Region homepage at *www.nwr.noaa.gov*.

(v) If the meal plant on board the whiting processing vessel breaks down, then no further overages may be retained for the rest of the cumulative trip limit period unless the overage is donated to a hunger relief organization.

(vi) Prohibited species may not be retained.

(vii) Donation of fish to a hunger relief organization must be noted in the transfer log (Product Transfer/Offloading Log (PTOL)), in the column for total value, by entering a value of ''0'' or ''donation,'' followed by the name of the hunger relief organization receiving the fish. Any fish or fish product that is retained in excess of trip limits under this rule, whether donated to a hunger relief organization or converted to meal, must be entered separately on the PTOL so that it is distinguishable from fish or fish products that are retained under trip limits. The information on the Mate's Receipt for any fish or fish product in excess of trip limits must be consistent with the information on the PTOL. The Mate's Receipt is an official document that states who takes possession of offloaded fish, and may be a Bill of Lading, Warehouse Receipt, or other official document that tracks the transfer of offloaded fish or fish product. The Mate's Receipt and PTOL must be made available for inspection upon request of an authorized officer throughout the cumulative limit period during which such landings occurred and for 15 days thereafter.

(h) *Additional restrictions on catcher/processors.* (1) A catcher/processor may receive fish from a catcher vessel, but that catch is counted against the catcher/processor allocation unless the catcher/processor has been declared as a mothership under paragraph (h)(3) of this section.

(2) A catcher/processor may not also act as a catcher vessel delivering unprocessed whiting to another processor in the same calendar year.

(3) When renewing its limited entry permit each year under § 660.333, the owner of a catcher/processor used to take and retain whiting must declare if the vessel will operate solely as a mothership in the whiting fishery during the calendar year to which its limited entry permit applies. Any such declaration is binding on the vessel for the calendar year, even if the permit is transferred during the year, unless it is rescinded in response to a written request from the permit holder. Any request to rescind a declaration must be made by the permit holder and granted in writing by the Regional Administrator before any unprocessed whiting has been taken on board the vessel that calendar year.

(i) *Processing fish waste at sea.* A vessel that processes only fish waste (a ''waste-processing vessel'') is not considered a whiting processor and therefore is not subject to the allocations, seasons, or restrictions for catcher/processors or motherships while it operates as a waste-processing vessel. However, no vessel may operate as a waste-processing vessel 48 hours immediately before and after a primary season for whiting in which the vessel operates as a catcher/processor or mothership. A vessel must meet the following conditions to qualify as a waste-processing vessel:

(1) The vessel makes meal (ground dried fish), oil, or minced (ground flesh) product, but does not make, and does not have on board, surimi (fish paste with additives), fillets (meat from the side of the fish, behind the head and in front of the tail), or headed and gutted fish (head and viscera removed).

(2) The amount of whole whiting on board does not exceed the trip limit (if any) allowed under § 660.370(c).

(3) Any trawl net and doors on board are stowed in a secured and covered manner, and detached from all towing lines, so as to be rendered unusable for fishing.

(4) The vessel does not receive codends containing fish.

(5) The vessel's operations are consistent with applicable state and Federal law, including those governing disposal of fish waste at sea.

■ 20. Section 660.390 is added to read as follows:

§ 660.390 Groundfish Conservation Areas (GCAs).

In § 660.302, a GCA is defined as ''a geographic area defined by coordinates expressed in latitude and longitude, created and enforced for the purpose of contributing to the rebuilding of overfished West Coast groundfish species.'' Specific GCAs may be defined here in this paragraph, or in the **Federal Register**, within the harvest specifications and management measures process. While some GCAs may be designed with the intent that their shape be determined by ocean bottom depth contours, their shapes are defined in regulation by latitude/longitude coordinates and are enforced by those coordinates. Fishing activity that is prohibited or permitted within a particular GCA is detailed in **Federal Register** documents associated with the harvest specifications and management measures process.

(a) *Rockfish Conservation Areas (RCAs).* RCAs are defined in the **Federal Register** through the harvest specifications and management measures process. RCAs may apply to a single gear type or to a group of gear types, such as ''trawl RCAs'' or ''non-trawl RCAs''.

(b) *Cowcod Conservation Areas (CCAs).* (1) The Western CCA is an area south of Point Conception that is bound by straight lines connecting all of the following points in the order listed:

33°50′ N. lat., 119°30′ W. long.;
33°50′ N. lat., 118°50′ W. long.;
32°20′ N. lat., 118°50′ W. long.;
32°20′ N. lat., 119°37′ W. long.;
33°00′ N. lat., 119°37′ W. long.;
33°00′ N. lat., 119°53′ W. long.;
33°33′ N. lat., 119°53′ W. long.;
33°33′ N. lat., 119°30′ W. long.;

and connecting back to 33°50′ N. lat., 119°30′ W. long.

(2) The Eastern CCA is a smaller area west of San Diego that is bound by straight lines connecting all of the following points in the order listed:

32°42′ N. lat., 118°02 W. long.;
32°42′ N. lat., 117°50 W. long.;
32°36′42″ N. lat., 117°50′ W. long.;
32°30′ N. lat., 117°53′30″ W. long.;
32°30′ N. lat., 118°02 W. long.;

and connecting back to 32°42′ N. lat., 118°02′ W. long.

(c) *Yelloweye Rockfish Conservation Area (YRCA).* The YRCA is a C-shaped area off the northern Washington coast that is bound by straight lines connecting all of the following points in the order listed:

48°18′ N. lat., 125°18′ W. long.;
48°18′ N. lat., 124°59′ W. long.;
48°11′ N. lat., 124°59′ W. long.;
48°11′ N. lat., 125°11′ W. long.;
48°04′ N. lat., 125°11′ W. long.;
48°04′ N. lat., 124°59′ W. long.;
48°00′ N. lat., 124°59′ W. long.;
48°00′ N. lat., 125°18′ W. long.; and

connecting back to 48°18′ N. lat., 125°18′ W. long.

[FR Doc. 04–15823 Filed 7–14–04; 8:45 am]

BILLING CODE 3510–22–S

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

50 CFR Part 679

[Docket No. 031125292–4061–02; I.D. 070904E]

Fisheries of the Exclusive Economic Zone Off Alaska; Pacific Ocean Perch in the Central Regulatory Area of the Gulf of Alaska

AGENCY: National Marine Fisheries Service (NMFS), National Oceanic and Atmospheric Administration (NOAA), Commerce.

ACTION: Closure.

SUMMARY: NMFS is prohibiting directed fishing for Pacific ocean perch in the Central Regulatory Area of the Gulf of Alaska (GOA). This action is necessary to prevent exceeding the 2004 total allowable catch (TAC) of Pacific ocean perch in this area.

DATES: Effective 1200 hrs, Alaska local time (A.l.t.), July 12, 2004, through 2400 hrs, A.l.t., December 31, 2004.

FOR FURTHER INFORMATION CONTACT: Josh Keaton, 907–586–2778.

SUPPLEMENTARY INFORMATION: NMFS manages the groundfish fishery in the GOA exclusive economic zone according to the Fishery Management Plan for Groundfish of the Gulf of Alaska (FMP) prepared by the North Pacific Fishery Management Council under authority of the Magnuson-Stevens Fishery Conservation and Management Act. Regulations governing fishing by U.S. vessels in accordance with the FMP appear at subpart H of 50 CFR part 600 and 50 CFR part 679.

The 2004 TAC specified for Pacific ocean perch in the Central Regulatory Area of the GOA is 8,390 metric tons (mt) as established by the 2004 harvest specifications for groundfish of the GOA (69 FR 9261, February 27, 2004).

In accordance with § 679.20(d)(1)(i), the Administrator, Alaska Region, NMFS (Regional Administrator), has determined that the 2004 TAC for Pacific ocean perch in the Central Regulatory Area will soon be reached. Therefore, the Regional Administrator is establishing a directed fishing allowance of 7,890 mt, and is setting aside the remaining 500 mt as bycatch to support other anticipated groundfish fisheries. In accordance with § 679.20(d)(1)(iii), the Regional Administrator finds that this directed fishing allowance has been reached. Consequently, NMFS is prohibiting directed fishing for Pacific ocean perch in the Central Regulatory Area of the GOA.

Classification

This action responds to the best available information recently obtained from the fishery. The Assistant Administrator for Fisheries, NOAA, (AA), finds good cause to waive the requirement to provide prior notice and opportunity for public comment pursuant to the authority set forth at 5 U.S.C. 553(b)(B) as such a requirement is impracticable and contrary to the public interest. This requirement is impracticable and contrary to the public interest as it would prevent NMFS from responding to the most recent fisheries data in a timely fashion and would delay the closure of the directed fishery for Pacific ocean perch in the Central Regulatory Area of the GOA.

The AA also finds good cause to waive the 30–day delay in the effective date of this action under 5 U.S.C. 553(d)(3). This finding is based upon the reasons provided above for waiver of prior notice and opportunity for public comment.

This action is required by § 679.20 and is exempt from review under Executive Order 12866.

Authority: 16 U.S.C. 1801 *et seq.*

Dated: July 12, 2004.

Alan D. Risenhoover,

Acting Director, Office of Sustainable Fisheries, National Marine Fisheries Service.

[FR Doc. 04–16060 Filed 7–12–04; 2:43 pm]

BILLING CODE 3510–22–S

Proposed Rules

Federal Register
Vol. 69, No. 135
Thursday, July 15, 2004

This section of the FEDERAL REGISTER contains notices to the public of the proposed issuance of rules and regulations. The purpose of these notices is to give interested persons an opportunity to participate in the rule making prior to the adoption of the final rules.

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 39

[Docket No. 92–ANE–15–AD]

RIN 2120–AA64

Airworthiness Directives; Pratt & Whitney JT8D–200 Series Turbofan Engines

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Notice of proposed rulemaking (NPRM).

SUMMARY: The FAA proposes to supersede an existing airworthiness directive (AD) for Pratt & Whitney JT8D–200 series turbofan engines. That AD currently requires installation of high pressure turbine (HPT) containment hardware on JT8D–217C and –219 engines. That AD also currently requires replacing LPT-to-exhaust case bolts and nuts with improved containment hardware on JT8D–209, –217, –217A, –217C, and –219 engines. This proposed AD would require installation of improved HPT containment hardware on JT8D–209, –217, –217A, –217C, and –219 engines. This proposed AD results from four reports of uncontained HPT failures of JT8D–200 series engines, since AD 99–22–14 was issued. We are proposing this AD to prevent uncontained HPT events resulting from HPT shaft fractures.

DATES: We must receive any comments on this proposed AD by September 13, 2004.

ADDRESSES: Use one of the following addresses to submit comments on this proposed AD:

- By mail: Federal Aviation Administration (FAA), New England Region, Office of the Regional Counsel, Attention: Rules Docket No. 92–ANE–15–AD, 12 New England Executive Park, Burlington, MA 01803–5299.
- By fax: (781) 238–7055.
- By e-mail: *9-ane-adcomment@faa.gov.*

You may get the service information identified in this proposed AD from Pratt & Whitney, 400 Main St., East Hartford, CT 06108; telephone (860) 565–7700; fax (860) 565–1605.

You may examine the AD docket at the FAA, New England Region, Office of the Regional Counsel, 12 New England Executive Park, Burlington, MA.

FOR FURTHER INFORMATION CONTACT: Keith Lardie, Aerospace Engineer, Engine Certification Office, FAA, Engine and Propeller Directorate, 12 New England Executive Park, Burlington, MA 01803–5299; telephone (781) 238–7189; fax (781) 238–7199.

SUPPLEMENTARY INFORMATION:

Comments Invited

We invite you to submit any written relevant data, views, or arguments regarding this proposal. Send your comments to an address listed under **ADDRESSES.** Include ''AD Docket No. 92–ANE–15–AD'' in the subject line of your comments. If you want us to acknowledge receipt of your mailed comments, send us a self-addressed, stamped postcard with the docket number written on it; we will date-stamp your postcard and mail it back to you. We specifically invite comments on the overall regulatory, economic, environmental, and energy aspects of the proposed AD. If a person contacts us verbally, and that contact relates to a substantive part of this proposed AD, we will summarize the contact and place the summary in the docket. We will consider all comments received by the closing date and may amend the proposed AD in light of those comments.

We are reviewing the writing style we currently use in regulatory documents. We are interested in your comments on whether the style of this document is clear, and your suggestions to improve the clarity of our communications that affect you. You may get more information about plain language at *http://www.faa.gov/language* and *http://www.plainlanguage.gov.*

Examining the AD Docket

You may examine the AD Docket (including any comments and service information), by appointment, between 8 a.m. and 4:30 p.m., Monday through Friday, except Federal holidays. See **ADDRESSES** for the location.

Discussion

On October 21, 1999, the FAA issued AD 99–22–14, Amendment 39–11392 (64 FR 58328, October 29, 1999). That AD requires installation of HPT containment hardware on JT8D–217C and –219 engines. That AD also requires replacing LPT-to-exhaust case bolts and nuts with improved containment hardware on JT8D–209, –217, –217A, –217C, and –219 engines. That AD was the result of reports of uncontained HPT events resulting from HPT shaft fractures and LPT flange separations resulting from LPT blade failures. That condition, if not corrected, could result in uncontained HPT events resulting from HPT shaft fractures and LPT flange separations resulting from LPT blade failures.

Actions After AD 99–22–14 was Issued

After AD 99–22–14 was issued, we received four reports of uncontained HPT shaft fractures on JT8D–200 series engines. During one of these failures on a JT8D–217A engine, parts escaped forward of the old configuration HPT containment shield. This event demonstrates that the old configuration HPT containment shield is insufficient for preventing uncontained engine failures. AD 99–22–14 did not require JT8D–209, –217, and –217A engines to install the improved HPT containment shields.

Also, after that AD was issued, PW determined that the LPT-to-exhaust case bolts and nuts introduced by AD 99–22–14 have a higher failure rate than the previous bolt and nut configuration. We are preparing a separate proposed AD to address the replacement of that hardware, as recommended in a recently issued PW SB. This proposal no longer requires the replacement of LPT-to-exhaust case bolts and nuts with the bolts and nuts required by AD 99–22–14.

Also, after that AD was issued, we discovered that the requirements from superseded AD 93–23–10, Amendment 39–8746, to install HPT containment shields on JT8D–209, –217, and –217A engines, were inadvertently omitted from AD 99–22–14.

Relevant Service Information

We have reviewed and approved the technical contents of Pratt & Whitney Alert Service Bulletin (ASB) No. A6346, Revision 3, dated May 21, 2004, which

describes the installation of improved HPT containment hardware on JT8D–209, –217, –217A, –217C, and –219 engines.

Differences Between This Proposed AD and the Manufacturer's Service Information

Although Pratt & Whitney ASB No. A6346, Revision 3, dated May 21, 2004, has an installation termination date of December 31, 2004, for all the affected engine models, this proposed AD would require the installation on JT8D–209, –217, and –217A engines no later than December 31, 2007.

FAA's Determination and Requirements of the Proposed AD

We have evaluated all pertinent information and identified an unsafe condition that is likely to exist or develop on other products of this same type design. Therefore, we are proposing this AD, which would require the installation of improved HPT containment hardware at the following:

- For JT8D–209, –217, and –217A engines, at the next engine shop visit after the effective date of this proposed AD, but no later than December 31, 2007; and
- For JT8D–217C and –219 engines, at the next engine shop visit after the effective date of this AD, but no later than December 31, 2004.

The proposed AD would require that you do these actions using the service information described previously.

Costs of Compliance

There are about 2,345 PW JT8D–200 series turbofan engines of the affected design in the worldwide fleet. We estimate that 1,143 engines are installed on airplanes of U.S. registry, and that 280 engines would be affected by this proposed AD. We estimate that 80% of the –217C and –219 engines already have the improved HPT containment hardware installed. We also estimate that no additional labor costs will be incurred when these parts are installed during engine shop visit. Required parts would cost about $19,991 per engine. Based on these figures, we estimate the total cost of the proposed AD to U.S. operators to be $5,597,480.

Regulatory Findings

We have determined that this proposed AD would not have federalism implications under Executive Order 13132. This proposed AD would not have a substantial direct effect on the States, on the relationship between the national Government and the States, or on the distribution of power and responsibilities among the various levels of government.

For the reasons discussed above, I certify that the proposed regulation:

1. Is not a ''significant regulatory action'' under Executive Order 12866;

2. Is not a ''significant rule'' under the DOT Regulatory Policies and Procedures (44 FR 11034, February 26, 1979); and

3. Would not have a significant economic impact, positive or negative, on a substantial number of small entities under the criteria of the Regulatory Flexibility Act.

We prepared a summary of the costs to comply with this proposal and placed it in the AD Docket. You may get a copy of this summary by sending a request to us at the address listed under **ADDRESSES.** Include ''AD Docket No. 92–ANE–15–AD'' in your request.

List of Subjects in 14 CFR Part 39

Air transportation, Aircraft, Aviation safety, Safety.

The Proposed Amendment

Accordingly, under the authority delegated to me by the Administrator, the Federal Aviation Administration proposes to amend 14 CFR part 39 as follows:

PART 39—AIRWORTHINESS DIRECTIVES

1. The authority citation for part 39 continues to read as follows:

Authority: 49 U.S.C. 106(g), 40113, 44701.

§ 39.13 [Amended]

2. The FAA amends § 39.13 by removing Amendment 39–11392 (64 FR 58328, October 29, 1999) and by adding a new airworthiness directive, to read as follows:

Pratt & Whitney: Docket No. 92–ANE–15–AD. Supersedes AD 99–22–14, Amendment 39–11392.

Comments Due Date

(a) The Federal Aviation Administration (FAA) must receive comments on this airworthiness directive (AD) action by September 13, 2004.

Affected ADs

(b) This AD supersedes AD 99–22–14, Amendment 39–11392.

Applicability

(c) This AD applies to Pratt & Whitney (PW) JT8D–209, –217, –217A, –217C, and –219 turbofan engines. These engines are installed on, but not limited to, Boeing 727 series and MD–80 series airplanes.

Unsafe Condition

(d) This AD results from four reports of uncontained HPT failures of JT8D–200 series engines, since AD 99–22–14 was issued. We are issuing this AD to prevent uncontained HPT events resulting from HPT shaft fractures.

Compliance

(e) You are responsible for having the actions required by this AD performed within the compliance times specified unless the actions have already been done.

(f) Install the improved high pressure turbine (HPT) containment hardware. Use the applicable compliance schedule in the following Table 1, and Paragraphs 1. through 3.G. of Accomplishment Instructions of PW Alert Service Bulletin (ASB) No. JT8D A6346, dated September 10, 1998, or Revision 1, dated April 23, 1999, or Revision 2, dated December 1, 1999, or Revision 3, dated May 21, 2004.

TABLE 1.—COMPLIANCE SCHEDULE

For engine models	Install improved HPT containment hardware
JT8D–217C and –219	At the next engine shop visit after the effective date of this AD, but no later than December 31, 2004.
JT8D–209, –217, and –217A	At the next engine shop visit after the effective date of this AD, but no later than December 31, 2007.

Definition

(g) For the purpose of this AD, an engine shop visit is defined as engine maintenance that involves the separation of the J and K flanges.

Alternative Methods of Compliance

(h) The Manager, Engine Certification Office, has the authority to approve alternative methods of compliance for this AD if requested using the procedures found in 14 CFR 39.19.

Material Incorporated by Reference

(i) None.

Related Information

(j) None.

Issued in Burlington, Massachusetts, on July 7, 2004.

Francis A. Favara,

Acting Manager, Engine and Propeller Directorate, Aircraft Certification Service.

[FR Doc. 04–16006 Filed 7–14–04; 8:45 am]

BILLING CODE 4910–13–P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 39

[Docket No. FAA–2004–18033; Directorate Identifier 2004–CE–16–AD]

RIN 2120–AA64

Airworthiness Directives; Cessna Aircraft Company Models 190, 195, 195A, and 195B Airplanes

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Notice of proposed rulemaking (NPRM).

SUMMARY: The FAA proposes to adopt a new airworthiness directive (AD) for all Cessna Aircraft Company (Cessna) Models 190, 195, 195A, and 195B airplanes that are equipped with certain inboard aileron hinge brackets. This proposed AD would require you to repetitively inspect the affected inboard aileron hinge brackets for cracks or corrosion and replace them if found cracked or corroded with brackets that are not made from magnesium. Replacement would terminate the need for the repetitive inspections. This proposed AD is the result of several reports of cracks and corrosion found on the magnesium aileron hinge brackets. Magnesium is known to be susceptible to corrosion. We are issuing this proposed AD to detect and correct corrosion damage to the inboard aileron hinge brackets. Such damage could result in the brackets cracking across the bearing boss and could lead to the aileron separating from the airplane with consequent reduced or loss of control of the airplane.

DATES: We must receive any comments on this proposed AD by September 10, 2004.

ADDRESSES: Use one of the following to submit comments on this proposed AD:

- *DOT Docket Web site:* Go to *http://dms.dot.gov* and follow the instructions for sending your comments electronically.
- *Government-wide rulemaking Web site:* Go to *http://www.regulations.gov* and follow the instructions for sending your comments electronically.
- *Mail:* Docket Management Facility; U.S. Department of Transportation, 400 Seventh Street, SW., Nassif Building, Room PL–401, Washington, DC 20590–001.
- *Fax:* 1–202–493–2251.
- *Hand Delivery:* Room PL–401 on the plaza level of the Nassif Building, 400 Seventh Street, SW., Washington, DC, between 9 a.m. and 5 p.m., Monday through Friday, except Federal holidays.

You may get the service information identified in this proposed AD from Cessna Aircraft Company, Product Support P.O. Box 7706, Wichita, Kansas 67277; telephone: (316) 517–5800; facsimile: (316) 942–9006.

You may view the comments to this proposed AD in the AD docket on the Internet at *http://dms.dot.gov.*

FOR FURTHER INFORMATION CONTACT: Gary D. Park, Aerospace Engineer, FAA, Wichita Aircraft Certification Office, 1801 Airport Road, Room 100, Mid-Continent Airport, Wichita, Kansas 67209; telephone: (316) 946–4123; facsimile: (316) 946–4107.

SUPPLEMENTARY INFORMATION:

Comments Invited

How do I comment on this proposed AD? We invite you to submit any written relevant data, views, or arguments regarding this proposal. Send your comments to an address listed under **ADDRESSES.** Include the docket number, ''FAA–2004–18033; Directorate Identifier 2004–CE–16–AD'' at the beginning of your comments. We will post all comments we receive, without change, to *http://dms.dot.gov,* including any personal information you provide. We will also post a report summarizing each substantive verbal contact with FAA personnel concerning this proposed rulemaking. Using the search function of our docket Web site, anyone can find and read the comments received into any of our dockets, including the name of the individual who sent the comment (or signed the comment on behalf of an association, business, labor union, etc.). This is docket number FAA–2004–18033. You may review the DOT's complete Privacy Act Statement in the **Federal Register** published on April 11, 2000 (65 FR 19477–78) or you may visit *http://dms.dot.gov.*

Are there any specific portions of this proposed AD I should pay attention to? We specifically invite comments on the overall regulatory, economic, environmental, and energy aspects of this proposed AD. If you contact us through a nonwritten communication and that contact relates to a substantive part of this proposed AD, we will summarize the contact and place the summary in the docket. We will consider all comments received by the closing date and may amend this proposed AD in light of those comments and contacts.

Docket Information

Where can I go to view the docket information? You may view the AD docket that contains the proposal, any comments received, and any final disposition in person at the DMS Docket Offices between 9 a.m. and 5 p.m. (eastern standard time), Monday through Friday, except Federal holidays. The Docket Office (telephone 1–800–647–5227) is located on the plaza level of the Department of Transportation NASSIF Building at the street address stated in **ADDRESSES.** You may also view the AD docket on the Internet at *http://dms.dot.gov.* The comments will be available in the AD docket shortly after the DMS receives them.

Discussion

What events have caused this proposed AD? The FAA has received several reports of cracks and corrosion on part number (P/N) 0322709 and P/N 0322709–1 inboard aileron hinge brackets on Cessna Models 190, 195, 195A, and 195B airplanes. These inboard aileron hinge brackets are constructed of magnesium, which is highly susceptible to corrosion.

When corrosion starts to develop, the inboard aileron hinge brackets could crack across the bearing boss.

What is the potential impact if FAA took no action? Cracked or corroded inboard aileron hinge brackets, if not detected and corrected, could result in the ailerons separating from the airplane with consequent reduced or loss of control of the airplane.

Is there service information that applies to this subject? Cessna has issued Single Engine Service Bulletin SEB04–1, dated April 26, 2004.

What are the provisions of this service information? The service bulletin includes procedures for:

—Inspecting the P/N 0322709 and P/N 0322709–1 inboard aileron hinge brackets for cracks or corrosion; and

—Replacing any bracket found cracked or corroded with a bracket that is FAA-approved and made from aluminum.

FAA's Determination and Requirements of this Proposed AD

What has FAA decided? We have evaluated all pertinent information and identified an unsafe condition that is likely to exist or develop on other products of this same type design. Therefore, we are proposing AD action.

What would this proposed AD require? This proposed AD would require you to repetitively inspect the affected inboard aileron hinge brackets for cracks or corrosion and replace them if found cracked or corroded with brackets that are not made from magnesium. Replacement would terminate the need for the repetitive inspections.

How does the revision to 14 CFR part 39 affect this proposed AD? On July 10, 2002, we published a new version of 14 CFR part 39 (67 FR 47997, July 22, 2002), which governs FAA's AD system. This regulation now includes material that relates to altered products, special flight permits, and alternative methods of compliance. This material previously was included in each individual AD. Since this material is included in 14 CFR part 39, we will not include it in future AD actions.

Costs of Compliance

How many airplanes would this proposed AD impact? We estimate that this proposed AD affects 1,180 airplanes in the U.S. registry.

What would be the cost impact of this proposed AD on owners/operators of the affected airplanes? We estimate the following costs to accomplish this proposed inspection:

Labor cost	Parts cost	Total cost per airplane	Total cost on U.S. operators
1 workhour × $65 per hour = $65	No special parts necessary for inspection.	$65 per airplane	1,180 airplanes × $65 = $76,700.

We estimate the following costs to accomplish any necessary replacements that would be required based on the results of this proposed inspection. We have no way of determining the number of airplanes that may need this replacement:

Labor cost	Parts cost	Total cost per airplane
6 workhours × $65 per hour = $390	$2,954	$3,344 per airplane.

Regulatory Findings

Would this proposed AD impact various entities? We have determined that this proposed AD would not have federalism implications under Executive Order 13132. This proposed AD would not have a substantial direct effect on the States, on the relationship between the national Government and the States, or on the distribution of power and responsibilities among the various levels of government.

Would this proposed AD involve a significant rule or regulatory action? For the reasons discussed above, I certify that this proposed AD:

1. Is not a ''significant regulatory action'' under Executive Order 12866;

2. Is not a ''significant rule'' under the DOT Regulatory Policies and Procedures (44 FR 11034, February 26, 1979); and

3. Will not have a significant economic impact, positive or negative, on a substantial number of small entities under the criteria of the Regulatory Flexibility Act.

We prepared a summary of the costs to comply with this proposed AD and placed it in the AD Docket. You may get a copy of this summary by sending a request to us at the address listed under **ADDRESSES.** Include ''AD Docket FAA–2004–18033; Directorate Identifier 2004-CE–16–AD'' in your request.

List of Subjects in 14 CFR Part 39

Air transportation, Aircraft, Aviation safety, Safety.

The Proposed Amendment

Accordingly, under the authority delegated to me by the Administrator, the Federal Aviation Administration proposes to amend 14 CFR part 39 as follows:

PART 39—AIRWORTHINESS DIRECTIVES

1. The authority citation for part 39 continues to read as follows:

Authority: 49 U.S.C. 106(g), 40113, 44701.

§ 39.13 [Amended]

2. The FAA amends § 39.13 by adding the following new airworthiness directive (AD):

Cessna Aircraft Company: Docket No. FAA–2004–18033; Directorate Identifier 2004–CE–16–AD.

When Is the Last Date I Can Submit Comments on This Proposed AD?

(a) We must receive comments on this proposed airworthiness directive (AD) by September 10, 2004.

What Other ADs Are Affected by This Action?

(b) None.

What Airplanes Are Affected by This AD?

(c) This AD affects Models 190, 195, 195A, and 195B airplanes, all serial numbers, that are:

(1) certificated in any category; and

(2) equipped with at least one part number (P/N) 0322709 or P/N 0322709–1 inboard aileron hinge bracket.

What Is the Unsafe Condition Presented in This AD?

(d) This AD is the result of several reports of cracks and corrosion found on the magnesium aileron hinge brackets. Magnesium is known to be susceptible to corrosion. We are issuing this AD to detect and correct corrosion damage to the inboard aileron hinge brackets. Such damage could result in the brackets cracking across the bearing boss and could lead to the aileron separating from the airplane with consequent reduced or loss of control of the airplane.

What Must I do To Address This Problem?

(e) To address this problem, you must do the following:

Actions	Compliance	Procedures
(1) Inspect each P/N 0322709 and P/N 0322709–1 inboard aileron hinge bracket for cracks or corrosion.	Initially inspect within the next 100 hours time-in-service (TIS) after the effective date of this AD, unless already done. Repetitively inspect thereafter at intervals not to exceed 100 hours TIS until each bracket is replaced with an FAA-approved bracket that is not made with magnesium, as specified in the service information.	Follow the procedures in Cessna Single Engine Service Bulletin SEB04–1, dated April 26, 2004.
(2) Replace any cracked or corroded inboard aileron hinge bracket with an FAA-approved bracket, as specified in the service information.	Prior to further flight after any inspection where any cracked or corroded bracket is found. You may terminate the repetitive inspections required by this AD when all brackets are replaced with FAA-approved brackets that are not made with magnesium, as specified in the service information.	Follow the procedures in Cessna Single Engine Service Bulletin SEB04–1, dated April 26, 2004.
(3) You may replace all inboard aileron hinge brackets (as specified in paragraph (e)(2) of this AD) regardless if any corrosion or crack is found as terminating action for the repetitive inspeciton requirement of this AD.	You may do this replacement at any time, but you must replace any corroded or cracked bracket prior to further flight after the applicable inspection where any corrosion or crack is found.	Follow the procedures in Cessna Single Engine Service Bulletin SEB04–1, dated April 26, 2004.
(4) Do not install any P/N 0322709 or P/N 0322709–1 inboard aileron hinge bracket; or any other inboard aileron hinge bracket made with magnesium.	As of the effective date of this AD	Not applicable.

May I Request an Alternative Method of Compliance?

(f) You may request a different method of compliance or a different compliance time for this AD by following the procedures in 14 CFR 39.19. Unless FAA authorizes otherwise, send your request to your principal inspector. The principal inspector may add comments and will send your request to the Manager, Wichita Aircraft Certification Office, FAA. For information on any already approved alternative methods of compliance, contact Gary D. Park, Aerospace Engineer, FAA, Wichita Aircraft Certification Office, 1801 Airport Road, Room 100, Mid-Continent Airport, Wichita, Kansas 67209; telephone: (316) 946–4123; facsimile: (316) 946–4107.

May I Get Copies of the Documents Referenced in This AD?

(g) You may get copies of the documents referenced in this AD Cessna Aircraft Company, Product Support P.O. Box 7706, Wichita, Kansas 67277; telephone: (316) 517–5800; facsimile: (316) 942–9006. You may view the AD docket at the Docket Management Facility; U.S. Department of Transportation, 400 Seventh Street, SW., Nassif Building, Room PL–401, Washington, DC, or on the Internet at *http://dms.dot.gov.*

Issued in Kansas City, Missouri, on July 9, 2004.

James E. Jackson,

Acting Manager, Small Airplane Directorate, Aircraft Certification Service.

[FR Doc. 04–16098 Filed 7–14–04; 8:45 am]

BILLING CODE 4910–13–P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 39

[Docket No. FAA–2004–18030; Directorate Identifier 2004–CE–13–AD]

RIN 2120–AA64

Airworthiness Directives; GROB–WERKE Model G120A Airplanes

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Notice of proposed rulemaking (NPRM).

SUMMARY: The FAA proposes to adopt a new airworthiness directive (AD) for all GROB–WERKE (GROB) Model G120A airplanes. This proposed AD would require you to repetitively inspect visually the area between the vertical stabilizer main spar and the nearby vertical stabilizer skin for any disbonding/crack; repair any disbonding/crack found; and calculate weight and balance after any repair. This proposed AD is the result of mandatory continuing airworthiness information (MCAI) issued by the airworthiness authority for Germany. We are issuing this proposed AD to detect and correct any disbonding/crack in the area between the vertical stabilizer main spar and nearby stabilizer skin, which could result in possible structural failure. This failure could lead to difficulty in airplane flight control.

DATES: We must receive any comments on this proposed AD by August 16, 2004.

ADDRESSES: Use one of the following to submit comments on this proposed AD:

- *DOT Docket Web site:* Go to *http://dms.dot.gov* and follow the instructions for sending your comments electronically.
- *Governmentwide rulemaking Web site:* Go to *http://www.regulations.gov* and follow the instructions for sending your comments electronically.
- *Mail:* Docket Management Facility; U.S. Department of Transportation, 400 Seventh Street, SW., Nassif Building, Room PL–401, Washington, DC 20590–001.
- *Fax:* 1–202–493–2251.
- *Hand Delivery:* Room PL–401 on the plaza level of the Nassif Building, 400 Seventh Street, SW., Washington, DC, between 9 a.m. and 5 p.m., Monday through Friday, except Federal holidays.

You may get the service information identified in this proposed AD from GROB Luft-und Raumfahrt, Lettenbachstrasse 9, D–86874 Tussenhausen-Mattsies, Federal Republic of Germany; telephone: 49 8268 998139; facsimile: 49 8268 998200.

You may view the comments to this proposed AD in the AD docket on the Internet at *http://dms.dot.gov.*

FOR FURTHER INFORMATION CONTACT: Karl Schletzbaum, Aerospace Engineer, FAA, Small Airplane Directorate, 901 Locust, Room 301, Kansas City, Missouri 64106; telephone: (816) 329–4146; facsimile: (816) 329–4090.

SUPPLEMENTARY INFORMATION:

Comments Invited

How do I comment on this proposed AD? We invite you to submit any written relevant data, views, or arguments regarding this proposal. Send your comments to an address listed under **ADDRESSES**. Include the docket number, ''FAA–2004–18030; Directorate Identifier 2004–CE–13–AD'' at the beginning of your comments. We will post all comments we receive, without change, to *http://dms.dot.gov,* including any personal information you provide. We will also post a report summarizing each substantive verbal contact with FAA personnel concerning this proposed rulemaking. Using the search function of our docket web site, anyone can find and read the comments received into any of our dockets, including the name of the individual who sent the comment (or signed the comment on behalf of an association, business, labor union, etc.). This is docket number FAA–2004–18030. You may review the DOT's complete Privacy Act Statement in the **Federal Register** published on April 11, 2000 (65 FR 19477–78) or you may visit *http://dms.dot.gov.*

Are there any specific portions of this proposed AD I should pay attention to? We specifically invite comments on the overall regulatory, economic, environmental, and energy aspects of this proposed AD. If you contact us through a nonwritten communication and that contact relates to a substantive part of this proposed AD, we will summarize the contact and place the summary in the docket. We will consider all comments received by the closing date and may amend this proposed AD in light of those comments and contacts.

Docket Information

Where can I go to view the docket information? You may view the AD docket that contains the proposal, any comments received, and any final disposition in person at the DMS Docket Offices between 9 a.m. and 5 p.m. (eastern standard time), Monday through Friday, except Federal holidays. The Docket Office (telephone 1–800–647–5227) is located on the plaza level of the Department of Transportation NASSIF Building at the street address stated in **ADDRESSES**. You may also view the AD docket on the Internet at *http://dms.dot.gov.* The comments will be available in the AD docket shortly after the DMS receives them.

Discussion

What events have caused this proposed AD? The Luftfahrt-Bundesamt (LBA), which is the airworthiness authority for Germany, recently notified FAA that an unsafe condition may exist on all GROB Model G120A airplanes. The LBA reports that a routine inspection of a Model G120A–I airplane found disbonding/cracking in the area between the vertical stabilizer main spar and nearby vertical stabilizer skin near the VOR (very high frequency omnidirectional range) antenna. A fleet-wide inspection of the Model G120A–I airplane fleet found one other Model G120A–I airplane with disbonding/cracking in the same area. The most likely reason for the disbonding/cracking was an incorrectly installed antenna support bracket, which caused permanent tension on the bonding seam. This resulted in disbonding/cracking in the area near the VOR antenna.

What is the potential impact if FAA took no action? Any disbonding/crack in the area between the vertical stabilizer main spar and nearby stabilizer skin could result in possible structural failure. This failure could lead to difficulty in airplane flight control.

Is there service information that applies to this subject? GROB has issued Service Bulletin No. MSB1121–049, dated April 20, 2004.

What are the provisions of this service information? The service information includes procedures for:

—Inspecting visually the area between the vertical stabilizer main spar and the nearby vertical stabilizer skin for any disbonding/cracking); and

—Contacting the manufacturer for a repair instruction if any disbonding/crack is found.

What action did the LBA take? The LBA classified this service bulletin as mandatory and issued German AD Number D–2004–204, dated April 23, 2004, to ensure the continued airworthiness of these airplanes in Germany.

Did the LBA inform the United States under the bilateral airworthiness agreement? These GROB Model G120A airplanes are manufactured in Germany and are type-certificated for operation in the United States under the provisions of section 21.29 of the Federal Aviation Regulations (14 CFR 21.29) and the applicable bilateral airworthiness agreement.

Under this bilateral airworthiness agreement, the LBA has kept us informed of the situation described above.

FAA's Determination and Requirements of This Proposed AD

What has FAA decided? We have examined the LBA's findings, reviewed all available information, and determined that AD action is necessary for products of this type design that are certificated for operation in the United States.

Since the unsafe condition described previously is likely to exist or develop on other GROB Model G120A airplanes of the same type design that are registered in the United States, we are proposing AD action to detect and correct any disbonding/crack in the area between the vertical stabilizer main spar and nearby stabilizer skin, which could result in possible structural failure. This failure could lead to difficulty in airplane flight control.

What would this proposed AD require? This proposed AD would require you to incorporate the actions in the previously-referenced service bulletin.

How does the revision to 14 CFR part 39 affect this proposed AD? On July 10, 2002, we published a new version of 14 CFR part 39 (67 FR 47997, July 22, 2002), which governs FAA's AD system. This regulation now includes material that relates to altered products, special flight permits, and alternative methods of compliance. This material previously was included in each individual AD. Since this material is included in 14 CFR part 39, we will not include it in future AD actions.

Costs of Compliance

How many airplanes would this proposed AD impact? We estimate that this proposed AD affects 6 airplanes in the U.S. registry.

What would be the cost impact of this proposed AD on owners/operators of the affected airplanes? We estimate the following costs to do this proposed inspection:

Labor cost	Parts cost	Total cost per airplane	Total cost on U.S. operators
1 workhour × $65 per hour = $65	Not Applicable	$65	6 × $65 = $390.

We estimate the following costs to do any necessary repairs that would be required based on the results of this proposed inspection. We have no way of determining the number of airplanes that may need this repair:

Labor cost	Parts cost	Total cost per airplane
20 workhours × $65 per hour = $1,300	The manufacturer covers under warranty and will supply any parts for the new U-profile assembly (antenna support bracket) consisting of part numbers: 120A–2363.02; 120A–2364; and 120A–2365.	$1,300.

Regulatory Findings

Would this proposed AD impact various entities? We have determined that this proposed AD would not have federalism implications under Executive Order 13132. This proposed AD would not have a substantial direct effect on the States, on the relationship between the national Government and the States, or on the distribution of power and responsibilities among the various levels of government.

Would this proposed AD involve a significant rule or regulatory action? For the reasons discussed above, I certify that this proposed AD:

1. Is not a ''significant regulatory action'' under Executive Order 12866;

2. Is not a ''significant rule'' under the DOT Regulatory Policies and Procedures (44 FR 11034, February 26, 1979); and

3. Will not have a significant economic impact, positive or negative, on a substantial number of small entities under the criteria of the Regulatory Flexibility Act.

We prepared a summary of the costs to comply with this proposed AD and placed it in the AD Docket. You may get a copy of this summary by sending a request to us at the address listed under **ADDRESSES.** Include the docket number, ''FAA–2004–18030; Directorate Identifier 2004–CE–13–AD'' in your request.

List of Subjects in 14 CFR Part 39

Air transportation, Aircraft, Aviation safety, Safety.

The Proposed Amendment

Accordingly, under the authority delegated to me by the Administrator, the Federal Aviation Administration proposes to amend 14 CFR part 39 as follows:

PART 39—AIRWORTHINESS DIRECTIVES

1. The authority citation for part 39 continues to read as follows:

Authority: 49 U.S.C. 106(g), 40113, 44701.

§ 39.13 [Amended]

2. The FAA amends § 39.13 by adding the following new airworthiness directive (AD):

Grob-Werke: Docket No. FAA–2004–18030; Directorate Identifier 2004–CE–13–AD

When is the Last Date I can Submit Comments on this Proposed AD?

(a) We must receive comments on this proposed airworthiness directive (AD) by August 16, 2004.

What Other ADs Are Affected by This Action?

(b) None.

What Airplanes Are Affected by This AD?

(c) This AD affects Model G120A airplanes, all serial numbers, that are certificated in any category.

What Is the Unsafe Condition Presented in This AD?

(d) This AD is the result of mandatory continuing airworthiness information (MCAI) issued by the airworthiness authority for Germany. The actions specified in this AD are intended to detect and correct any disbonding/crack in the area between the vertical stabilizer main spar and nearby stabilizer skin, which could result in possible structural failure. This failure could lead to difficulty in airplane flight control.

What Must I Do To Address This Problem?

(e) To address this problem, you must do the following:

Actions	Compliance	Procedures
(1) Inspect the area between the vertical stabilizer main spar and the nearby vertical stabilizer skin for any disbonding/crack along the spar/skin contact (both sides of the vertical stabilizer).	Within the next 50 hours time-in-service (TIS) after the effective date of this AD, unless already done. Repetitively inspect thereafter at every 50 hours TIS.	Follow GROB Luft-und Raumfahrt Service Bulletin No. MSB1121–049, dated April 20, 2004. The applicable airplane maintenance manual also addresses this issue.
(2) If any disbonding/crack is found during any inspection required by paragraph (e)(1) of this AD: (i) get a repair instruction from the manufacturer; and (ii) follow this repair instruction (iii) The repetitive inspections of paragraph (e)(1) of this AD are still required after any repair	Before further flight after any inspection required by paragraph (e)(1) of this AD where any disbonding/crack is found.	Follow GROB Luft-und Raumfahrt Service Bulletin No. MSB1121–049, dated April 20, 2004; and any repair instruction obtained from GROB Luft-und Raumfahrt, Lettenbachstrasse 9, D–86874 Tussenhausen-Mattsies, Federal Republic of Germany; telephone: 49 8268 998139; facsimile: 49 8268 998200. Obtain approval of and this repair instruction through the FAA at the address specified in paragraph (f) of this AD. The applicable airplane maintenance manual also addresses this issue.
(3) Calculate weight and balance after any repair required by paragraph (e)(2) of this AD.	Before further flight after any repair required by paragraph (e)(2) of this AD.	Follow GROB Luft-und Raumfahrt Service Bulletin No. MSB1121–049, dated April 20, 2004. The applicable airplane maintenance manual also addresses this issue.

May I Request an Alternative Method of Compliance?

(f) You may request a different method of compliance or a different compliance time for this AD by following the procedures in 14 CFR 39.19. Unless FAA authorizes otherwise, send your request to your principal inspector. The principal inspector may add comments and will send your request to the Manager, Standards Office, Small Airplane Directorate, FAA. For information on any already approved alternative methods of compliance, contact Karl Schletzbaum, Aerospace Engineer, FAA, Small Airplane Directorate, 901 Locust, Room 301, Kansas City, Missouri 64106; telephone: (816) 329–4146; facsimile: (816) 329–4090.

May I Get Copies of the Documents Referenced in This AD?

(g) You may get copies of the documents referenced in this AD from GROB Luft-und Raumfahrt, Lettenbachstrasse 9, D–86874 Tussenhausen-Mattsies, Federal Republic of Germany; telephone: 49 8268 998139; facsimile: 49 8268 998200. You may view the AD docket at the Docket Management Facility; U.S. Department of Transportation, 400 Seventh Street, SW., Nassif Building, Room PL–401, Washington, DC, or on the Internet at *http://dms.dot.gov.*

Is There Other Information That Relates to This Subject?

(h) German AD Number D–2004–204, dated April 23, 2004, also addresses the subject of this AD.

Issued in Kansas City, Missouri, on July 9, 2004.

James E. Jackson,

Acting Manager, Small Airplane Directorate, Aircraft Certification Service.

[FR Doc. 04–16097 Filed 7–14–04; 8:45 am]

BILLING CODE 4910–13–P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 39

[Docket No. FAA–2004–18603; Directorate Identifier 2003–NM–14–AD]

RIN 2120–AA64

Airworthiness Directives; Airbus Model A310; and Model A300 B4–600, B4–600R, C4–605R Variant F, and F4–600R (Collectively Called A300–600) Series Airplanes

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Notice of proposed rulemaking (NPRM).

SUMMARY: The FAA proposes to supersede an existing airworthiness directive (AD) for certain Model A310; and Model A300 B4–600, A300 B4–600R, and A300 F4–600R (collectively called A300–600) series airplanes. That AD currently requires modifying the ram air turbine (RAT) by replacing the ejection jack. This proposed AD would require a one-time inspection of the RAT ejection jack to determine the part number, and further investigative and corrective actions if necessary. This proposed AD is prompted by the discovery of a rupture in the housing of one of the RAT ejection jacks installed as specified in the existing AD. We are proposing this AD to prevent rupture of the housing of the RAT ejection jack due to overpressure in the jack caused by overfilling the hydraulic fluid, and consequent failure of the RAT ejection jack. Failure of the ejection jack could result in a lack of hydraulic pressure or electrical power in an emergency.

DATES: We must receive comments on this proposed AD by August 16, 2004.

ADDRESSES: Use one of the following addresses to submit comments on this proposed AD.

- *DOT Docket Web site:* Go to *http://dms.dot.gov* and follow the instructions for sending your comments electronically.
- *Government-wide rulemaking Web site:* Go to *http://www.regulations.gov* and follow the instructions for sending your comments electronically.
- *Mail:* Docket Management Facility; U.S. Department of Transportation, 400 Seventh Street, SW., Nassif Building, room PL–401, Washington, DC 20590.
- *Fax:* (202) 493–2251.
- *Hand Delivery:* Room PL–401 on the plaza level of the Nassif Building, 400 Seventh Street, SW., Washington, DC, between 9 a.m. and 5 p.m., Monday through Friday, except Federal holidays.

You can get the service information identified in this proposed AD from Airbus, 1 Rond Point Maurice Bellonte, 31707 Blagnac Cedex, France.

You may examine the contents of this AD docket on the Internet at *http://dms.dot.gov*, or at the Docket Management Facility, U.S. Department of Transportation, 400 Seventh Street, SW., room PL–401, on the plaza level of the Nassif Building, Washington, DC.

FOR FURTHER INFORMATION CONTACT: Dan Rodina, Aerospace Engineer; International Branch, ANM–116, FAA, Transport Airplane Directorate, 1601 Lind Avenue, SW., Renton, Washington 98055–4056; telephone (425) 227–2125; fax (425) 227–1149.

SUPPLEMENTARY INFORMATION:

Docket Management System (DMS)

The FAA has implemented new procedures for maintaining AD dockets electronically. As of May 17, 2004, new AD actions are posted on DMS and assigned a docket number. We track each action and assign a corresponding directorate identifier. The DMS AD docket number is in the form ''Docket No. FAA–2004–99999.'' The Transport Airplane Directorate identifier is in the form ''Directorate Identifier 2004–NM–999–AD.'' Each DMS AD docket also lists the directorate identifier (''Old Docket Number'') as a cross-reference for searching purposes.

Comments Invited

We invite you to submit any written relevant data, views, or arguments regarding this proposed AD. Send your comments to an address listed under **ADDRESSES.** Include ''Docket No. FAA–2004–18603; Directorate Identifier 2003–NM–14–AD'' at the beginning of your comments. We specifically invite comments on the overall regulatory, economic, environmental, and energy aspects of the proposed AD. We will consider all comments received by the closing date and may amend the proposed AD in light of those comments.

We will post all comments we receive, without change, to *http://dms.dot.gov*, including any personal information you provide. We will also post a report summarizing each substantive verbal contact with FAA personnel concerning this proposed AD. Using the search function of our docket Web site, anyone can find and read the comments in any of our dockets, including the name of the individual who sent the comment (or signed the comment on behalf of an association, business, labor union, etc.). You may review the DOT's complete Privacy Act Statement in the **Federal Register** published on April 11, 2000 (65 FR 19477–78), or you may visit *http://dms.dot.gov*.

We are reviewing the writing style we currently use in regulatory documents. We are interested in your comments on whether the style of this document is clear, and your suggestions to improve the clarity of our communications that affect you. You can get more information about plain language at *http://www.faa.gov/language* and *http://www.plainlanguage.gov*.

Examining the Docket

You may examine the AD docket in person at the Docket Management Facility office between 9 a.m. and 5 p.m., Monday through Friday, except Federal holidays. The Docket Management Facility office (telephone (800) 647–5227) is located on the plaza level of the Nassif Building at the DOT street address stated in the **ADDRESSES** section. Comments will be available in

the AD docket shortly after the DMS receives them.

Discussion

On June 21, 2001, we issued AD 2001–13–16, amendment 39–12297 (66 FR 34798, July 2, 2001), for certain Model A310 and Model A300 B4–600, A300 B4–600R, and A300 F4–600R (collectively called A300–600) series airplanes. That AD requires replacing the ejection jack on the ram air turbine (RAT). That AD was prompted by the discovery of an anomaly during production, and follow-up analysis that showed that the nut at the end of the ejection jack piston rod had insufficient thread engagement to absorb impact loads when the RAT was deployed at high speed. We issued that AD to prevent loss of ability to properly restrain the movement of the RAT and possible consequent damage to the RAT itself and to other airplane components. In the event of an emergency, failure of the RAT ejection jack could result in a lack of hydraulic pressure or electrical power on the airplane.

Actions Since Existing AD Was Issued

Since we issued AD 2001–13–16, the Direction Générale de l'Aviation Civile (DGAC), which is the airworthiness authority for France, has notified us that, during a routine inspection, a rupture was discovered in the housing of one of the RAT ejection jacks installed as specified in AD 2001–13–16. Investigation revealed that a certain batch of ejection jacks were serviced incorrectly, which may have led to overfilling of the ejection jacks and overpressure in the ejection jack. This condition, if not corrected, could result in a rupture of the housing of the RAT ejection jack, leading to failure of the RAT ejection jack. In the event of an emergency, failure of the RAT ejection jack could result in a lack of hydraulic pressure or electrical power.

Relevant Service Information

Airbus has issued Service Bulletins A300–29–6050, Revision 02, dated April 16, 2003 (for Model A300–600 series airplanes); and A310–29–2088, Revision 01, dated February 3, 2003 (for Model A310 series airplanes). The service bulletins describe procedures for a one-time inspection of the RAT ejection jack to determine the part number, and applicable related investigative and corrective actions. The investigative and corrective actions include determining the serial number of the RAT ejection jack; measuring the fluid level of the ejection jack, if the serial number is one of the affected batch; and servicing the fluid level, or replacing the RAT ejection jack with a new RAT ejection jack, as applicable. We have determined that accomplishing the actions specified in the service information will adequately address the unsafe condition. The DGAC mandated these service bulletins and issued French airworthiness directive 2002–638(B), dated December 24, 2002, to ensure the continued airworthiness of these airplanes in France.

The Airbus service bulletins refer to Hamilton Sundstrand Service Bulletin ERPS03/04EJ–29–2, dated May 8, 2002, as an additional source of service information for identifying subject RAT ejection jacks and performing the applicable related investigative and corrective actions described previously.

FAA's Determination and Requirements of the Proposed AD

These airplane models are manufactured in France and are type certificated for operation in the United States under the provisions of section 21.29 of the Federal Aviation Regulations (14 CFR 21.29) and the applicable bilateral airworthiness agreement. According to this bilateral airworthiness agreement, the DGAC has kept the FAA informed of the situation described above. We have examined the DGAC's findings, evaluated all pertinent information, and determined that AD action is necessary for airplanes of this type design that are certificated for operation in the United States.

Therefore, we are proposing to supersede AD 2001–13–16. This proposed AD would continue to require modifying the RAT by replacing the RAT ejection jack with a new, improved RAT ejection jack. This proposed AD would also require a one-time inspection of the RAT ejection jack to determine the part number, and further investigative and corrective actions if necessary. The proposed AD would require you to use the service information described previously to perform these actions, except as discussed under ''Difference Between the Proposed AD and Service Information.''

Difference Between the Proposed AD and Service Information

Although the Accomplishment Instructions of the Airbus and Hamilton Sundstrand service bulletins describe procedures for submitting inspection results, this proposed AD would not require that action.

Change to Existing AD

This proposed AD would retain all requirements of AD 2001–13–16. Since AD 2001–13–16 was issued, the AD format has been revised, and certain paragraphs have been rearranged. As a result, the corresponding paragraph identifiers have changed in this proposed AD, as listed in the following table:

REVISED PARAGRAPH IDENTIFIERS

Requirement in AD 2001–13–16	Corresponding requirement in this proposed AD
Paragraph (a)	Paragraph (f).
Paragraph (b)	Paragraph (g).

We have also revised the applicability of the existing AD to identify model designations as published in the most recent type certificate data sheet for the affected models.

Costs of Compliance

AD 2001–13–16 affects about 117 airplanes of U.S. registry. The actions that are currently required by AD 2001–13–16 and retained in this proposed AD take about 6 work hours per airplane, at an average labor rate of $65 per work hour. There is no charge for required parts. Based on these figures, the estimated cost of the currently required actions for U.S. operators is $45,630, or $390 per airplane.

This proposed AD would affect approximately 149 airplanes of U.S. registry. The new proposed inspection would take about 1 work hour per airplane, at an average labor rate of $65 per work hour. Based on these figures, the estimated cost of the new actions specified in this proposed AD for U.S. operators is $9,685, or $65 per airplane.

Regulatory Findings

We have determined that this proposed AD would not have federalism implications under Executive Order 13132. This proposed AD would not have a substantial direct effect on the States, on the relationship between the national Government and the States, or on the distribution of power and responsibilities among the various levels of government.

For the reasons discussed above, I certify that the proposed regulation:

1. Is not a ''significant regulatory action'' under Executive Order 12866;

2. Is not a ''significant rule'' under the DOT Regulatory Policies and Procedures (44 FR 11034, February 26, 1979); and

3. Will not have a significant economic impact, positive or negative, on a substantial number of small entities under the criteria of the Regulatory Flexibility Act.

We prepared a regulatory evaluation of the estimated costs to comply with this proposed AD. See the **ADDRESSES**

section for a location to examine the regulatory evaluation.

List of Subjects in 14 CFR Part 39

Air transportation, Aircraft, Aviation safety, Safety.

The Proposed Amendment

Accordingly, under the authority delegated to me by the Administrator, the FAA proposes to amend 14 CFR part 39 as follows:

PART 39—AIRWORTHINESS DIRECTIVES

1. The authority citation for part 39 continues to read as follows:

Authority: 49 U.S.C. 106(g), 40113, 44701.

§ 39.13 [Amended]

2. The FAA amends § 39.13 by removing amendment 39–12297 (66 FR 34798, July 2, 2001) and adding the following new airworthiness directive (AD):

Airbus: Docket No. FAA–2004–18603; Directorate Identifier 2003–NM–14–AD.

Comments Due Date

(a) The Federal Aviation Administration must receive comments on this AD action by August 16, 2004.

Affected ADs

(b) This AD supersedes AD 2001–13–16, amendment 39–12297 (66 FR 34798, July 2, 2001).

Applicability

(c) This AD applies to Airbus Model A310, and A300 B4–600, B4–600R, C4 605R Variant F, and F4–600R (collectively called A300–600) series airplanes; certificated in any category; as listed in Airbus Service Bulletin A300–29–6050, Revision 02, dated April 16, 2003; or A310–29–2088, Revision 01, dated February 3, 2003.

Unsafe Condition

(d) This AD was prompted by the discovery of a rupture in the housing of one of the RAT ejection jacks installed as specified in the existing AD. We are issuing this AD to prevent rupture of the housing of the RAT ejection jack due to overpressure in the jack caused by overfilling the hydraulic fluid, and consequent failure of the RAT ejection jack. Failure of the ejection jack could result in a lack of hydraulic pressure or electrical power in an emergency.

Compliance

(e) You are responsible for having the actions required by this AD performed within the compliance times specified, unless the actions have already been done.

Requirements of AD 2001–13–16

Modification

(f) For airplanes on which Airbus Modification 12259 has not been accomplished: Within 34 months after August 6, 2001 (the effective date of AD 2001–13–16, amendment 39–12297), modify the RAT per Airbus Service Bulletin A310–29–2086, Revision 01 (for Model A310 series airplanes), or A300–29–6048, Revision 01 (for Model A300–600 series airplanes), both dated July 12, 2000, as applicable.

Note 1: Modification of the RAT accomplished prior to August 6, 2001, in accordance with Airbus Service Bulletin A310–29–2086 or A300–29–6048, both dated April 6, 2000, as applicable, is considered acceptable for compliance with the action specified in paragraph (f) of this AD.

Parts Installation

(g) As of August 6, 2001, no person may install on an airplane an ejection jack, part number 730820, unless it has been modified per paragraph (f) of this AD.

Note 2: Airbus Service Bulletin A310–29–2086 and A300–29–6048, both Revision 01, refer to Hamilton Sundstrand Service Bulletin No. ERPS03/04EJ–29–1, as an additional source of service information for accomplishment of the modification of the RAT and testing of the modified RAT.

New Requirements of This AD

Inspection

(h) Within 2,500 flight hours after the effective date of this AD: Inspect the RAT ejection jack to determine the part number (P/N), in accordance with the Accomplishment Instructions of the applicable Airbus Service Bulletin listed in Table 1 of this AD. If the P/N can be determined and is neither 772652 nor 772654, no further action is required by this paragraph.

TABLE 1.—SERVICE INFORMATION

For this airplane model and series—	Airbus service bulletin—
A300–600	A300–29–6050, Revision 02, dated April 16, 2003.
A310	A310–29–2088, Revision 01, dated February 3, 2003.

Note 3: Airbus Service Bulletins A300–29–6050 and A310–29–2088 refer to Hamilton Sundstrand Service Bulletin ERPS03/04EJ–29–2, dated May 8, 2002, as an additional source of service information for identifying subject RAT ejection jacks and performing the applicable related investigative and corrective actions.

Related Investigative and Corrective Actions (If Necessary)

(i) If the P/N on the RAT ejection jack is either 772652 or 772654, or if the P/N cannot be determined: Before further flight, accomplish all applicable related investigative and corrective actions in accordance with the Accomplishment Instructions of the applicable Airbus Service Bulletin listed in Table 1 of this AD.

Actions Accomplished Previously

(j) Inspections and related investigative and corrective actions done before the effective date of this AD in accordance with Airbus Service Bulletin A300–29–6050 (for Model A300–600 series airplanes); or A310–29–2088 (for Model A310 series airplanes); both dated July 23, 2002; as applicable; are acceptable for compliance with the corresponding actions required by paragraphs (h) and (i) of this AD.

Alternative Methods of Compliance (AMOCs)

(k) The Manager, International Branch, ANM–116, Transport Airplane Directorate, FAA, has the authority to approve AMOCs for this AD, if requested in accordance with the procedures found in 14 CFR 39.19.

Related Information

(l) French airworthiness directive 2002–638(B), dated December 24, 2002, also addresses the subject of this AD.

Issued in Renton, Washington, on July 8, 2004.

Kevin M. Mullin,

Acting Manager, Transport Airplane Directorate, Aircraft Certification Service.

[FR Doc. 04–16031 Filed 7–14–04; 8:45 am]

BILLING CODE 4910–13–P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 39

[Docket No. FAA–2004–18601; Directorate Identifier 2004–NM–34–AD]

RIN 2120–AA64

Airworthiness Directives; Boeing Model 747–100, –200B, –200F, –200C, –100B, –300, –100B SUD, –400, –400D, –400F, and 747SR Series Airplanes

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Notice of proposed rulemaking (NPRM).

SUMMARY: The FAA proposes to adopt a new airworthiness directive (AD) for certain Boeing Model 747 series airplanes. This proposed AD would require a one-time inspection for discrepancies of the frame web and inner chords on the forward edge frame of the number 5 main entry door cutout, and related corrective action. This proposed AD is prompted by a report of cracking of the frame web and inner chords on the forward edge frame of the number 5 main entry door. We are proposing this AD to find and fix discrepancies of the frame web and inner chords, which could result in cracking, subsequent severing of the frame, and consequent rapid depressurization of the airplane.

DATES: We must receive comments on this proposed AD by August 30, 2004.

ADDRESSES: Use one of the following addresses to submit comments on this proposed AD.

- *DOT Docket Web site:* Go to *http://dms.dot.gov* and follow the instructions for sending your comments electronically.
- *Government-wide rulemaking Web site:* Go to *http://www.regulations.gov* and follow the instructions for sending your comments electronically.
- Mail: Docket Management Facility, U.S. Department of Transportation, 400 Seventh Street SW., Nassif Building, room PL–401, Washington, DC 20590.
- By fax: (202) 493–2251.
- Hand Delivery: room PL–401 on the plaza level of the Nassif Building, 400 Seventh Street SW., Washington, DC, between 9 a.m. and 5 p.m., Monday through Friday, except Federal holidays.

You can get the service information identified in this proposed AD from Boeing Commercial Airplanes, P.O. Box 3707, Seattle, Washington 98124–2207.

You can examine the contents of this AD docket on the Internet at *http://dms.dot.gov,* or at the Docket Management Facility, U.S. Department of Transportation, 400 Seventh Street SW., room PL–401, on the plaza level of the Nassif Building, Washington, DC.

FOR FURTHER INFORMATION CONTACT: Ivan Li, Aerospace Engineer, Airframe Branch, ANM–120S, FAA, Seattle Aircraft Certification Office, 1601 Lind Avenue, SW., Renton, Washington 98055–4056; telephone (425) 917–6437; fax (425) 917–6590.

SUPPLEMENTARY INFORMATION:

Docket Management System (DMS)

The FAA has implemented new procedures for maintaining AD dockets electronically. As of May 17, 2004, new AD actions are posted on DMS and assigned a docket number. We track each action and assign a corresponding directorate identifier. The DMS AD docket number is in the form ''Docket No. FAA–2004–99999.'' The Transport Airplane Directorate identifier is in the form ''Directorate Identifier 2004–NM–999–AD.'' Each DMS AD docket also lists the directorate identifier (''Old Docket Number'') as a cross-reference for searching purposes.

Comments Invited

We invite you to submit any written relevant data, views, or arguments regarding this proposed AD. Send your comments to an address listed under **ADDRESSES.** Include ''Docket No. FAA–2004–18601; Directorate Identifier 2004–NM–34–AD'' in the subject line of your comments. We specifically invite comments on the overall regulatory, economic, environmental, and energy aspects of the proposed AD. We will consider all comments submitted by the closing date and may amend the proposed AD in light of those comments.

We will post all comments we receive, without change, to *http://dms.dot.gov,* including any personal information you provide. We will also post a report summarizing each substantive verbal contact with FAA personnel concerning this proposed AD. Using the search function of that website, anyone can find and read the comments in any of our dockets, including the name of the individual who sent the comment (or signed the comment on behalf of an association, business, labor union, etc.). You can review DOT's complete Privacy Act Statement in the **Federal Register** published on April 11, 2000 (65 FR 19477–78), or you can visit *http://dms.dot.gov.*

We are reviewing the writing style we currently use in regulatory documents. We are interested in your comments on whether the style of this document is clear, and your suggestions to improve the clarity of our communications that affect you. You can get more information about plain language at *http://www.faa.gov/language* and *http://www.plainlanguage.gov.*

Examining the Docket

You can examine the AD docket in person at the Docket Management Facility office between 9 a.m. and 5 p.m., Monday through Friday, except Federal holidays. The Docket Management Facility office (telephone (800) 647–5227) is located on the plaza level of the Nassif Building at the DOT street address stated in the **ADDRESSES** section. Comments will be available in the AD docket shortly after the DMS receives them.

Discussion

We have received a report of cracking of the frame web and inner chords at body station (BS) 2231, stringer 26L, on a Model 747 series airplane. The service history shows that both chords (forward and aft) and the web on the forward edge frame of the number 5 main entry door (MED) cutout were severed. The inboard chord of the number 5 MED lower main sill goes through a cutout in the BS 2231 frame at stringer 26. Investigation revealed that, during production, the inboard chord of the lower main sill of the door can rub against the BS 2231 frame. Such rubbing can cause nicks, scratches and/or gouges in the frame inner chords and web, and subsequent cracking. Cracks in the inner chords and web could extend and fully sever the frame, which could result in rapid depressurization of the airplane.

Related AD

On July 26, 2001, we issued AD 2001–16–02, amendment 39–12370 (66 FR 41440, August 8, 2001), which is applicable to certain Boeing Model 747 series airplanes. That AD requires repetitive inspections to find cracking of the frame web, strap, inner chords, and inner chord angle of the forward edge frame of the number 5 main entry door cutout, and repair if necessary. The actions specified by that AD are intended to find and fix such cracking, which could result in severing of the frame, inability of the edge frame to react door stop loads, and consequent rapid depressurization of the airplane.

Relevant Service Information

We have reviewed and approved Boeing Alert Service Bulletin 747–53A2494, dated September 18, 2003, which describes procedures for a one-time detailed visual inspection for discrepancies (nicks, scratches, and/or gouges) of the frame web and inner chords (forward and aft) of the forward edge frame of the number 5 main entry door cutout, and related corrective action. The corrective action includes a surface high frequency eddy current inspection for cracking on the frame inner chords of BS 2231, rework of any discrepancies, and repair of any cracking. The service bulletin references certain 747 Structural Repair Manuals for rework/repair procedures. The service bulletin also recommends contacting the manufacturer for repair instructions. The service bulletin indicates that if the repetitive inspections recommended in Boeing Alert Service Bulletin 747–53A2450, Revision 2, dated January 4, 2001 (required by AD 2001–16–02) are being done, the one-time inspection is not necessary. We have determined that accomplishing the actions specified in the service bulletin will adequately address the unsafe condition.

FAA's Determination and Requirements of the Proposed AD

We have evaluated all pertinent information and identified an unsafe condition that is likely to exist or develop on other airplanes of this same type design. Therefore, we are proposing this AD, which would require a one-time inspection for discrepancies of the frame web and inner chords of the forward edge frame of the number 5 main entry door cutout, and related corrective action. The proposed AD would require you to use the service

information described previously to perform these actions, except as discussed under ''Differences Between the Proposed AD and Service Bulletin.'' Accomplishment of the actions required by this proposed AD would not terminate the repetitive inspections required by AD 2001–16–02.

Differences Between the Proposed AD and Service Bulletin

The service bulletin refers to a ''detailed visual inspection'' for discrepancies of the frame web and inner chords. We have determined that the procedures in the service bulletin should be described as a ''detailed inspection.'' We have included Note 1 to define this type of inspection.

As discussed previously, the referenced service bulletin specifies that if the repetitive inspections recommended in Boeing Alert Service Bulletin 747–53A2450 (and required by AD 2001–16–02) are currently being done, the one-time inspection required by this proposed AD is not necessary. However, we have determined that the repetitive inspections required by AD 2001–16–02 would not address the unsafe condition identified in this proposed AD. The one-time inspection required by this proposed AD is to find nicks, scratches, and/or gouges that can lead to cracking, and repair of those discrepancies. Therefore, we have determined that the proposed one-time inspection is required prior to or concurrently with the next inspection required by AD 2001–16–02.

The referenced service bulletin also specifies that operators may contact the manufacturer for disposition of certain repair conditions, but this proposed AD would require operators to repair those conditions per a method approved by the Manager of the Seattle Aircraft Certification Office of the FAA, or per data meeting the type certification basis of the airplane approved by a Boeing Company Designated Engineering Representative who has been authorized by the FAA to make such findings.

Costs of Compliance

This proposed AD would affect about 220 airplanes of U.S. registry and 1,055 airplanes worldwide. The proposed inspection would take about 2 work hours per airplane, at an average labor rate of $65 per work hour. Based on these figures, the estimated cost of the inspection proposed by this AD for U.S. operators is $28,600, or $130 per airplane.

Regulatory Findings

We have determined that this proposed AD would not have federalism implications under Executive Order 13132. This proposed AD would not have a substantial direct effect on the States, on the relationship between the national Government and the States, or on the distribution of power and responsibilities among the various levels of government.

For the reasons discussed above, I certify that the proposed regulation:

1. Is not a ''significant regulatory action'' under Executive Order 12866;

2. Is not a ''significant rule'' under the DOT Regulatory Policies and Procedures (44 FR 11034, February 26, 1979); and

3. Will not have a significant economic impact, positive or negative, on a substantial number of small entities under the criteria of the Regulatory Flexibility Act.

We prepared a regulatory evaluation of the estimated costs to comply with this proposed AD. See the **ADDRESSES** section for a location to examine the regulatory evaluation.

List of Subjects in 14 CFR Part 39

Air transportation, Aircraft, Aviation safety, Safety.

The Proposed Amendment

Accordingly, under the authority delegated to me by the Administrator, the FAA proposes to amend 14 CFR part 39 as follows:

PART 39—AIRWORTHINESS DIRECTIVES

1. The authority citation for part 39 continues to read as follows:

Authority: 49 U.S.C. 106(g), 40113, 44701.

§ 39.13 [Amended]

2. The FAA amends § 39.13 by adding the following new airworthiness directive (AD):

Boeing: Docket No. FAA–2004–18601; Directorate Identifier 2004–NM–34–AD.

Comments Due Date

(a) The Federal Aviation Administration (FAA) must receive comments on this AD action by August 30, 2004.

Affected ADs

(b) Accomplishing this AD will not terminate the repetitive inspections required by AD 2001–16–02, amendment 39–12370.

Applicability

(c) This AD applies to certain Model 747–100, –200B, –200F, –200C, –100B, –300, –100B SUD, –400, –400D, –400F, and 747SR series airplanes; line numbers 1 through 1333 inclusive; certificated in any category.

Unsafe Condition

(d) This AD was prompted by a report of cracking of the frame web and inner chords on the forward edge frame of the number 5 main entry door. We are issuing this AD to find and fix discrepancies of the frame web and inner chords, which could result in cracking, subsequent severing of the frame, and consequent rapid depressurization of the airplane.

Compliance

(e) You are responsible for having the actions required by this AD performed within the compliance times specified, unless the actions have already been done.

One-Time Inspection

(f) For airplanes on which the repetitive inspections required by AD 2001–16–02, amendment 39–12370, have not been done as of the effective date of this AD: Do a one-time detailed inspection for discrepancies (nicks, scratches, and/or gouges) of the frame web and inner chords (forward and aft) of the forward edge frame of the number 5 main entry door cutout, by doing all the applicable actions by using the Accomplishment Instructions of Boeing Alert Service Bulletin 747–53A2494, dated September 18, 2003. Do the inspection at the latest of the times specified in paragraphs (f)(1), (f)(2), and (f)(3) of this AD.

(1) Before the accumulation of 10,000 total flight cycles.

(2) Within 1,500 flight cycles after the effective date of this AD.

(3) Within 24 months after the effective date of this AD.

(g) For airplanes on which the repetitive inspections required by AD 2001–16–02, amendment 39–12370, have been done as of the effective date of this AD: Do the one-time inspection required by paragraph (f) of this AD before or concurrently with the next inspection required by AD 2001–16–02.

Note 1: For the purposes of this AD, a detailed inspection is: ''An intensive visual examination of a specific structural area, system, installation, or assembly to detect damage, failure, or irregularity. Available lighting is normally supplemented with a direct source of good lighting at intensity deemed appropriate by the inspector. Inspection aids such as mirror, magnifying lenses, etc., may be used. Surface cleaning and elaborate access procedures may be required.''

Related Corrective Action

(h) If any discrepancy is found during the inspection required by paragraph (f) or (g) of this AD: Before further flight, do all the related corrective actions by using the Accomplishment Instructions of Boeing Alert Service Bulletin 747–53A2494, dated September 18, 2003. Where the service bulletin specifies contacting the manufacturer for disposition of certain repair conditions, repair before further flight per a method approved by the Manager, Seattle Aircraft Certification Office (ACO), FAA; or per data meeting the type certification basis of the airplane approved by a Boeing Company Designated Engineering Representative who has been authorized by the Manager, Seattle ACO, to make such findings. For a repair method to be approved, the approval must specifically refer to this AD.

Alternative Methods of Compliance (AMOCs)

(i)(1) The Manager, Seattle ACO, has the authority to approve AMOCs for this AD, if requested in accordance with the procedures found in 14 CFR 39.19.

(2) An AMOC that provides an acceptable level of safety may be used for any repair required by this AD, if it is approved by a Boeing Company Designated Engineering Representative who has been authorized by the Manager, Seattle ACO, to make those findings. For a repair method to be approved, the approval must specifically refer to this AD.

Issued in Renton, Washington, on July 8, 2004.

Kevin M. Mullin,

Acting Manager, Transport Airplane Directorate, Aircraft Certification Service.

[FR Doc. 04–16030 Filed 7–14–04; 8:45 am]

BILLING CODE 4910–13–P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 39

[Docket No. FAA–2004–18602; Directorate Identifier 2003–NM–160–AD]

RIN 2120–AA64

Airworthiness Directives; Airbus Model A300 B2 and B4 Series Airplanes; and Model A300 B4–600, B4–600R, C4–605R Variant F, and F4–600R (Collectively Called A300–600) Series Airplanes

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Notice of proposed rulemaking (NPRM).

SUMMARY: The FAA proposes to adopt a new airworthiness directive (AD) for all Airbus Model A300 B2 and B4 series airplanes; and certain Airbus Model A300 B4–600, B4–600R, C4–605R Variant F, and F4–600R (collectively called A300–600) series airplanes. This proposed AD would require an inspection of the skin panels of the wing slats for damage and certain repairs, and applicable related investigative/corrective actions if necessary. This proposed AD is prompted by the results of an engineering evaluation that revealed that several repairs and some allowable damage limits specified in the structural repair manuals do not provide adequate static and/or fatigue strength for repaired wing slats. We are proposing this AD to find and fix previously done repairs of the wing slats that have inadequate static and/or fatigue strength, which, if not corrected, could result in loss of the slats and consequent reduced controllability of the airplane.

DATES: We must receive comments on this proposed AD by August 16, 2004.

ADDRESSES: Use one of the following addresses to submit comments on this proposed AD.

- *DOT Docket Web site:* Go to *http://dms.dot.gov* and follow the instructions for sending your comments electronically.
- *Government-wide rulemaking Web site:* Go to *http://www.regulations.gov* and follow the instructions for sending your comments electronically.
- *Mail:* Docket Management Facility, U.S. Department of Transportation, 400 Seventh Street SW., Nassif Building, room PL–401, Washington, DC 20590.
- *By fax:* (202) 493–2251.
- *Hand Delivery:* room PL–401 on the plaza level of the Nassif Building, 400 Seventh Street SW, Washington, DC, between 9 a.m. and 5 p.m., Monday through Friday, except Federal holidays.

You can get the service information identified in this proposed AD from Airbus, 1 Rond Point Maurice Bellonte, 31707 Blagnac Cedex, France.

You may examine the contents of this AD docket on the Internet at *http://dms.dot.gov,* or at the Docket Management Facility, U.S. Department of Transportation, 400 Seventh Street SW., room PL–401, on the plaza level of the Nassif Building, Washington, DC.

FOR FURTHER INFORMATION CONTACT: Tim Backman, Aerospace Engineer, International Branch, ANM–116, FAA, Transport Airplane Directorate, 1601 Lind Avenue, SW., Renton, Washington 98055–4056; telephone (425) 227–2797; fax (425) 227–1149.

SUPPLEMENTARY INFORMATION:

Docket Management System (DMS)

The FAA has implemented new procedures for maintaining AD dockets electronically. As of May 17, 2004, new AD actions are posted on DMS and assigned a docket number. We track each action and assign a corresponding directorate identifier. The DMS AD docket number is in the form ''Docket No. FAA–2004–99999.'' The Transport Airplane Directorate identifier is in the form ''Directorate Identifier 2004–NM–999–AD.'' Each DMS AD docket also lists the directorate identifier (''Old Docket Number'') as a cross-reference for searching purposes.

Comments Invited

We invite you to submit any written relevant data, views, or arguments regarding this proposed AD. Send your comments to an address listed under **ADDRESSES**. Include ''Docket No. FAA–2004–18602; Directorate Identifier 2003–NM–160–AD'' at the beginning of your comments. We specifically invite comments on the overall regulatory, economic, environmental, and energy aspects of the proposed AD. We will consider all comments submitted by the closing date and may amend the proposed AD in light of those comments.

We will post all comments we receive, without change, to *http://dms.dot.gov,* including any personal information you provide. We will also post a report summarizing each substantive verbal contact with FAA personnel concerning this proposed AD. Using the search function of our docket website, anyone can find and read the comments in any of our dockets, including the name of the individual who sent the comment (or signed the comment on behalf of an association, business, labor union, etc.). You may review the DOT's complete Privacy Act Statement in the **Federal Register** published on April 11, 2000 (65 FR 19477–78), or you may visit *http://dms.dot.gov.*

We are reviewing the writing style we currently use in regulatory documents. We are interested in your comments on whether the style of this document is clear, and your suggestions to improve the clarity of our communications that affect you. You can get more information about plain language at *http://www.faa.gov/language* and *http://www.plainlanguage.gov.*

Examining the Docket

You may examine the AD docket in person at the Docket Management Facility office between 9 a.m. and 5 p.m., Monday through Friday, except Federal holidays. The Docket Management Facility office (telephone (800) 647–5227) is located on the plaza level of the Nassif Building at the DOT street address stated in the **ADDRESSES** section. Comments will be available in the AD docket shortly after the DMS receives them.

Discussion

The Direction Générale de l'Aviation Civile (DGAC), which is the airworthiness authority for France, notified us that an unsafe condition may exist on all Airbus Model A300 B2 and B4 series airplanes; and certain Airbus Model A300 B4–600, B4–600R, C4–605R Variant F, and F4–600R (collectively called A300–600) series airplanes. The DGAC advises that the results of an engineering evaluation revealed that several repairs and some allowable damage limits specified in the structural repair manuals do not provide

adequate static and/or fatigue strength for repaired wing slats. Such inadequate static and/or fatigue strength, if not corrected, could result in loss of the slats and consequent reduced controllability of the airplane.

Relevant Service Information

Airbus has issued Service Bulletin A300–57–6092, Revision 2, dated November 21, 2002 (for Model A300 B4–600, B4–600R, C4–605R Variant F, and F4–600R (collectively called A300–600) series airplanes); and Service Bulletin A300–57–0238, Revision 2, dated November 21, 2002 (for Model A300 B2 and B4 series airplanes). The service bulletins describe procedures for a detailed inspection of the skin panels of the wing slats for damage and certain repairs, and applicable related investigative/corrective actions if necessary. The related investigative actions include inspecting repaired slats to determine the pitch of repair fasteners. The corrective actions include contacting Airbus for certain repair instructions or repairing in accordance with the applicable structural repair manual. We have determined that accomplishment of the actions specified in the service information will adequately address the unsafe condition. The DGAC mandated the service information and issued French airworthiness directive 2003–086(B), effective March 15, 2003, to ensure the continued airworthiness of these airplanes in France.

FAA's Determination and Requirements of the Proposed AD

These airplane models are manufactured in France and are type certificated for operation in the United States under the provisions of section 21.29 of the Federal Aviation Regulations (14 CFR 21.29) and the applicable bilateral airworthiness agreement. According to this bilateral airworthiness agreement, the DGAC has kept the FAA informed of the situation described above. We have examined the DGAC's findings, evaluated all pertinent information, and determined that AD action is necessary for products of this type design that are certificated for operation in the United States.

Therefore, we are proposing this AD, which would require doing the actions specified in the applicable service bulletin described previously, except as discussed under ''Differences Between the Proposed AD and Service Bulletins.''

Differences Between the Proposed AD and Service Bulletins

Although the service bulletins specify that operators may contact the manufacturer for disposition of damage in certain areas, this proposed AD would require operators to repair those damaged areas in accordance with a method approved by either the FAA or the DGAC (or its delegated agent). In addition, the applicable service bulletin specifies that the related investigative action does not need to be done for any repair that has a Repair Approval Sheet (RAS) or specific Airbus approval. We have determined that, for any repair that has a specific Airbus approval other than an RAS signed by the DGAC (or its delegated agent), this proposed AD would require accomplishing the related investigative action. These actions are consistent with existing bilateral airworthiness agreements.

Costs of Compliance

This proposed AD would affect about 120 airplanes of U.S. registry. The proposed actions would take about 3 work hours per airplane, at an average labor rate of $65 per work hour. Based on these figures, the estimated cost of the proposed AD for U.S. operators is $23,400, or $195 per airplane.

Regulatory Findings

We have determined that this proposed AD would not have federalism implications under Executive Order 13132. This proposed AD would not have a substantial direct effect on the States, on the relationship between the national Government and the States, or on the distribution of power and responsibilities among the various levels of government.

For the reasons discussed above, I certify that the proposed regulation:

1. Is not a ''significant regulatory action'' under Executive Order 12866;

2. Is not a ''significant rule'' under the DOT Regulatory Policies and Procedures (44 FR 11034, February 26, 1979); and

3. Will not have a significant economic impact, positive or negative, on a substantial number of small entities under the criteria of the Regulatory Flexibility Act.

We prepared a regulatory evaluation of the estimated costs to comply with this proposed AD. See the **ADDRESSES** section for a location to examine the regulatory evaluation.

List of Subjects in 14 CFR Part 39

Air transportation, Aircraft, Aviation safety, Safety.

The Proposed Amendment

Accordingly, under the authority delegated to me by the Administrator, the FAA proposes to amend 14 CFR part 39 as follows:

PART 39—AIRWORTHINESS DIRECTIVES

1. The authority citation for part 39 continues to read as follows:

Authority: 49 U.S.C. 106(g), 40113, 44701.

§ 39.13 [Amended]

2. The FAA amends § 39.13 by adding the following new airworthiness directive (AD):

Airbus: Docket No. FAA–2004–18602; Directorate Identifier 2003–NM–160–AD.

Comments Due Date

(a) The Federal Aviation Administration must receive comments on this AD action by August 16, 2004.

Affected ADs

(b) None.

Applicability

(c) This AD applies to all airplanes, certificated in any category, as identified in in Table 1 of this AD.

TABLE 1.—APPLICABILITY

Model	Serial numbers
A300 B2 and B4 series airplanes	All.
A300 B4–600, B4–600R, C4–605R Variant F, and F4–600R (collectively called A300–600) series airplanes.	796 and earlier.

Unsafe Condition

(d) This AD was prompted by the results of an engineering evaluation that revealed that several repairs and some allowable damage limits specified in the structural repair manuals do not provide adequate static and/or fatigue strength for repaired wing slats. We are issuing this AD to find and fix previously done repairs of the wing slats that have inadequate static and/or fatigue strength, which, if not corrected, could result in loss of the slats and consequent reduced controllability of the airplane.

Compliance

(e) You are responsible for having the actions required by this AD performed within the compliance times specified, unless the actions have already been done.

Service Bulletins

(f) The term ''service bulletin,'' as used in this AD, means the Accomplishment Instructions of the applicable service bulletin listed in Table 2 of this AD.

TABLE 2.—SERVICE BULLETINS

For model	Airbus service bulletin
(1) A300–600 series airplanes	A300–57–6092, Revision 02, dated November 21, 2002.
(2) A300 B2 and B4 series airplanes	A300–57–0238, Revision 02, dated November 21, 2002.

Inspection and Related Investigative/ Corrective Actions

(g) Within 18 months or 1,500 flight cycles from the effective date of this AD, whichever occurs first: Do a detailed inspection of the skin panels of the wing slats for damage and certain repairs, and do all applicable related investigative/corrective actions, by accomplishing all the actions in the applicable service bulletin. Do the actions in accordance with the service bulletin, except as required by paragraphs (h) and (i) of this AD. Do any related investigative/corrective action before further flight.

Note 1: For the purposes of this AD, a detailed inspection is ''an intensive visual examination of a specific structural area, system, installation, or assembly to detect damage, failure, or irregularity. Available lighting is normally supplemented with a direct source of good lighting at intensity deemed appropriate by the inspector. Inspection aids such as mirror, magnifying lenses, etc., may be used. Surface cleaning and elaborate access procedures may be required.''

Differences Between AD and Service Bulletin

(h) If any damage is detected during the inspection required by paragraph (g) of this AD, and the service bulletin recommends contacting Airbus for appropriate action: Before further flight, repair in accordance with a method approved by either the Manager, International Branch, ANM–116, FAA, Transport Airplane Directorate; or the Direction Générale de l'Aviation Civile (DGAC) (or its delegated agent).

(i) If any repair that has a specific Airbus approval other than an Repair Approval Sheet signed by the DGAC (or its delegated agent) is found during the inspection required by paragraph (g) of this AD, and the service bulletin specifies that the related investigative action is not necessary: Before further flight, do the applicable related investigative/corrective actions required by paragraph (g) of this AD.

(j) Where there are differences between this AD and the service bulletin, the AD prevails.

Alternative Methods of Compliance (AMOCs)

(k) The Manager, International Branch, ANM–116, has the authority to approve AMOCs for this AD, if requested using the procedures found in 14 CFR 39.19.

Related Information

(l) French airworthiness directive 2003–086(B), effective March 15, 2003, also addresses the subject of this AD.

Issued in Renton, Washington, on July 8, 2004.

Kevin M. Mullin,

Acting Manager, Transport Airplane Directorate, Aircraft Certification Service.

[FR Doc. 04–16029 Filed 7–14–04; 8:45 am]

BILLING CODE 4910–13–P

DEPARTMENT OF THE TREASURY

Internal Revenue Service

26 CFR Part 1

[REG–150562–03]

RIN 1545–BC67

Section 1045 Application to Partnerships

AGENCY: Internal Revenue Service (IRS), Treasury.

ACTION: Notice of proposed rulemaking and notice of public hearing.

SUMMARY: This document contains proposed regulations relating to the application of section 1045 of the Internal Revenue Code (Code) to partnerships and their partners. These regulations provide rules regarding the deferral of gain on a partnership's sale of qualified small business stock and deferral of gain on a partner's sale of qualified small business stock distributed by a partnership. The proposed regulations affect partnerships that invest in qualified small business stock and their partners. This document also provides notice of a public hearing on the proposed regulations.

DATES: Written or electronic comments and requests to speak and outlines of topics to be discussed at the public hearing scheduled for Tuesday, November 2, 2004, at 10 a.m. must be received by October 11, 2004.

ADDRESSES: Send submissions to: CC:PA:LPD:PR (REG–150562–03), Room 5203, Internal Revenue Service, PO Box 7604, Ben Franklin Station, Washington, DC 20044. Submissions may be hand delivered Monday through Friday between the hours of 8 a.m. and 4 p.m. to CC:PA:LPD:PR (REG–150562–03), Courier's Desk, Internal Revenue Service, 1111 Constitution Avenue, NW., Washington, DC, or sent electronically, via the IRS Internet site at: *www.irs.gov/regs* or via the Federal eRulemaking Portal at *www.regulations.gov* (IRS and REG–150562–03). The public hearing will be held in the IRS Auditorium, Internal Revenue Building, 1111 Constitution Avenue, NW., Washington, DC.

FOR FURTHER INFORMATION CONTACT: Concerning the proposed regulations, Charlotte Chyr, (202) 622–3070, or Jian H. Grant, (202) 622–3050; concerning submissions, the hearing, and/or placement on the building access list to attend the hearing, Sonya Cruse, (202) 622–4693 (not toll-free numbers).

SUPPLEMENTARY INFORMATION:

Paperwork Reduction Act

The collection of information contained in this notice of proposed rulemaking has been submitted to the Office of Management and Budget for review in accordance with the Paperwork Reduction Act of 1995 (44 U.S.C. 3507(d)). Comments on the collection of information should be sent to the Office of Management and Budget, Attn: Desk Officer for the Department of the Treasury, Office of Information and Regulatory Affairs, Washington, DC 20503, with copies to the Internal Revenue Service, Attn: IRS Reports Clearance Officer, SE:W:CAR:MP:T:T:SP Washington, DC 20224. Comments on the collection of information should be received no later than September 13, 2004. Comments are specifically requested concerning:

Whether the proposed collection of information is necessary for the proper performance of the functions of the Internal Revenue Service, including whether the information will have practical utility;

The accuracy of the estimated burden associated with the proposed collection of information (*see* below);

How the quality, utility, and clarity of the information to be collected may be enhanced;

How the burden of complying with the proposed collection of information can be minimized, including through the application of automated collection techniques or other forms of information technology; and

Estimates of capital or start-up costs and costs of operation, maintenance, and purchase of services to provide information.

The collection of information in this proposed regulation is in § 1.1045–

1(b)(4)(ii). This information is required to inform the IRS of partnerships and partners making the section 1045 election. The collection of information is required to obtain a benefit, that is, to elect to apply section 1045 treatment for qualified small business stock that is sold by the partnership. This information will be used by the partner to permit the partner to defer its allocable share of gain on the partnership's sale of qualified small business stock and by partnerships to make necessary adjustments to the basis of replacement qualified small business stock. The likely respondents are individuals, businesses or other for-profit institutions, and small businesses or organizations.

The estimated burden for the collection of information in § 1.1045–1(b)(4)(ii) is as follows:

Estimated total annual reporting burden: 1,000 hours.

The estimated annual burden per respondent varies from 45 to 75 minutes, depending on individual circumstances, with an estimated average of 1 hour.

Estimated number of respondents: 1000.

Estimated annual frequency of responses: On occasion.

An agency may not conduct or sponsor, and a person is not required to respond to, a collection of information unless the collection of information displays a valid OMB control number assigned by the Office of Management and Budget.

Books or records relating to a collection of information must be retained as long as their contents may become material in the administration of any internal revenue law. Generally, tax returns and tax return information are confidential, as required by 26 U.S.C. 6103.

Background

Section 1045 and section 1202 both provide for special treatment of gain on the sale of QSB stock held by non-corporate taxpayers. Under section 1202 of the Internal Revenue Code (Code), a taxpayer other than a corporation (a non-corporate taxpayer) excludes 50 percent of gain on the sale of qualified small business (QSB) stock (as defined in section 1202(c)) from gross income if the taxpayer holds the stock for more than five years. Section 1045 permits a non-corporate taxpayer that holds QSB stock (relinquished QSB stock) for more than six months and sells it after August 5, 1997, to elect to defer recognizing gain on the sale. To qualify for such deferral, the taxpayer must purchase QSB stock (replacement QSB stock) within a 60-day period beginning on the date of the sale of the relinquished QSB stock. Any gain not recognized reduces the cost basis of the replacement QSB stock. Section 1045(b)(3). The taxpayer recognizes gain to the extent the amount realized on the sale of the relinquished QSB stock exceeds the cost basis of the replacement QSB stock. Section 1045(a). Section 1045 does not apply to any gain treated as ordinary income. Id.

Section 6005(f)(2) of the Internal Revenue Service Restructuring and Reform Act of 1998, Public Law 105–206 (112 Stat. 6005(f)(2)), July 22, 1998, (the 1998 Act) added section 1045(b)(5). That section provides that rules similar to the rules in section 1202 (f), (g), (h), (i), (j), and (k) apply for purposes of section 1045. The legislative history accompanying the 1998 Act provides that the benefit of deferred recognition of gain with respect to the sale of QSB stock by a partnership will flow through to a partner who is not a corporation if the partner held the partnership interest at all times the partnership held the QSB stock. See H.R. Conf. Rep. 105–599, 105th Cong., 2d Sess. 339 (1998). The legislative history further provides that there are no limitations on the types of partners that a partnership may have in order for the benefits of section 1045 to apply. Id. at 340.

Under section 1202(g), a non-corporate taxpayer applies section 1202 to the taxpayer's share of a passthrough entity's gain from the sale of QSB stock if two requirements are met. First, the passthrough entity must have held the QSB stock for more than five years. Second, the taxpayer must have held an interest in the passthrough entity on the date the passthrough entity acquired the QSB stock and at all times thereafter before the disposition of the stock. For purposes of section 1202, passthrough entities include partnerships, S corporations, regulated investment companies (RICs), and common trust funds. Section 1202(g)(4).

QSB stock must generally be acquired by the taxpayer at its original issue. However, section 1202(h) provides that, in the case of certain transfers of QSB stock, the transferee is treated as having acquired such stock in the same manner as the transferor and as having held such stock during any continuous period immediately preceding the transfer during which it was held by the transferor. Section 1202(h) applies to transfers from a partnership to a partner of stock with respect to which requirements similar to the requirements of section 1202(g) are met at the time of the transfer (without regard to the 5-year holding period requirement) as well as to transfers by gift or at death.

The committee reports underlying the enactment of section 1202 explain that, under section 1202(h),

> [q]ualified small business stock * * * may be distributed by a partnership to one or more of its partners, as long as (1) all eligibility requirements with respect to qualified small business stock are met, and (2) the partner held its interest in the partnership on the date the partnership acquired the stock and at all times thereafter and before the disposition of the stock. In addition, a partner cannot treat stock distributed by a partnership as qualified small business stock to the extent that the partner's share of the stock distributed by the partnership exceeded the partner's interest in the partnership at the time the partnership acquired the stock.

H.R. Rep. No. 103–111, 103d Cong., lst Sess. 602 (1993).

The committee report goes on to explain that transferees in cases not described in section 1202(h) are not eligible for partial exclusion of gain under section 1202(a). Thus, for example, if qualified small business stock is transferred to a partnership and the partnership disposes of the stock, any gain from the disposition will not be eligible for the exclusion. Id.

Rev. Proc. 98–48 (1998–2 C.B. 367) generally provides procedures for taxpayers (including passthrough entities and individuals holding interests in a passthrough entity) to elect to apply section 1045. The background section of the revenue procedure explains that, under section 1045(b)(5), a passthrough entity that sells QSB stock held for more than 6 months may make a section 1045 election if the entity purchases replacement QSB stock during the 60-day period beginning on the date of the sale. Section 2.03, Rev. Proc. 98–48. The benefit of the section 1045 election flows through to a non-corporate taxpayer that held an interest in the passthrough entity for as long as the entity held the QSB stock. The background section of the revenue procedure also explains that, under section 1045(b)(5), if a passthrough entity sells QSB stock held for more than six months, a non-corporate taxpayer who has held an interest in the entity during the period in which the entity held the QSB stock and who purchases replacement QSB stock during the 60-day statutory period may elect to apply section 1045 to the non-corporate taxpayer's share of any gain on the sale that the entity does not defer under section 1045. Section 2.03, Rev. Proc. 98–48.

Since Rev. Proc. 98–48 was published, the IRS and Treasury

Department have received inquiries regarding the application of section 1045 to partnerships and their partners. In response to these inquiries, the proposed regulations provide rules relating to sales and purchases of interests in a partnership that owns QSB stock, partnership dispositions of QSB stock, partnership distributions of QSB stock, and contributions of QSB stock to a partnership. Partners and partnerships wishing to elect section 1045 must continue to follow the procedures of Rev. Proc. 98–48 for rules regarding the time and manner for making the election, the scope of the election, and revocation of the election.

Explanation of Provisions

A. General Rules and Definitions

1. QSB Stock

Section 1045(b)(1) provides that the term *QSB stock* has the same meaning given such term by section 1202(c). Section 1202(c) provides that the term *QSB stock* is any stock in a C corporation that is originally issued after the date of the enactment of the Revenue Reconciliation Act of 1993, if (A) as of the date of issuance, the corporation is a qualified small business, and (B) except as provided in section 1202(f) and (h), the stock is acquired by the taxpayer at its original issue in exchange for money or other property (not including stock), or as compensation for services provided to the corporation.

Some taxpayers have asked if a partner may treat a sale of a partnership interest as a sale of QSB stock or an acquisition of a partnership interest as an acquisition of QSB stock. Sections 1045 and 1202 do not adopt a look-though approach to the sale and acquisition of partnership interests. Under the plain language of section 1202(c), an investment in a partnership that holds or purchases QSB stock is not treated as an investment in QSB stock. This plain language interpretation is further supported by the structure of sections 1045 and 1202. Congress clearly contemplated partnership transactions when enacting section 1202, as several of its provisions address such transactions. In light of this, Congress's failure to provide for section 1202(a) treatment for acquisitions and dispositions of partnership interests appears to have been intentional. Such a decision by Congress would be consistent with the approach taken by section 1202(g). That section allows partners to qualify for section 1202(a) treatment with respect to gain recognized by reason of holding a partnership interest only if the partner held the interest in the partnership on the date of the partnership's acquisition of QSB stock and at all times thereafter before the disposition of the stock by the partnership. If a partner were to sell its partnership interest while the partnership still held QSB stock, then the partner would not have held the partnership interest from the date of the acquisition of that stock until the date of the disposition of the stock by the partnership. For these reasons, the proposed regulations provide that the term *QSB stock* does not include an interest in a partnership that holds or purchases QSB stock.

2. Eligible Partner

Under the proposed regulations, only an eligible partner may defer gain recognized by a partnership on the sale of QSB stock. Consistent with section 1202(g) and (h), the proposed regulations define an eligible partner as a non-corporate partner who held an interest in the partnership at all times that the partnership held the QSB stock or a non-corporate partner who acquired an interest in a partnership from an existing eligible partner by gift or death.

The proposed regulations provide special rules for determining eligible partners if a partnership (upper-tier partnership) holds an interest in a partnership (lower-tier partnership) that holds QSB stock. The proposed rules disregard the upper-tier partnership's ownership of the lower-tier partnership and treat each partner of the upper-tier partnership as owning the interest in the lower-tier partnership directly. A partner of the upper-tier partnership is treated as owning an interest in the lower-tier partnership during the period in which both the partner of the upper-tier partnership held an interest in the upper-tier partnership and the upper-tier partnership held an interest in the lower-tier partnership.

The IRS and the Treasury Department are concerned that, although the current look-through treatment for tiered partnerships may be the simplest approach, the application of the proposed rules presents the following potential problems: (1) The proposed rules prohibit an upper-tier partnership from making a section 1045 election at the partnership level; (2) the eligible partners of the upper-tier partnership may not have the necessary information to benefit from the proposed rules; and (3) notification from the lower-tier partnership to the upper-tier partnerships and their partners and vice versa may be difficult if multiple tiers of partnerships are involved. Accordingly, the IRS and Treasury Department request comments specifically on the application of the proposed rules with respect to tiered partnerships.

3. Nonrecognition Limitation

Under the proposed regulations, the amount of gain that an eligible partner may defer under section 1045 (whether the election to apply section 1045 is made at the partnership or the partner level) may not exceed: (A) The partner's smallest percentage interest in the partnership's income, gain, or loss with respect to the relinquished QSB stock, multiplied by (B) the partnership's realized gain from the sale of such stock. For this purpose, the partnership's realized gain from the sale of the QSB stock is determined without regard to any basis adjustment under section 734(b) or 743(b). This rule follows section 1202(g)(2) and (3) by ensuring that the partner can defer recognition of only the gain that relates to the partner's continuous economic interest in the relinquished QSB stock.

B. Partnership Election Under Section 1045

1. General Rule

Consistent with Rev. Proc. 98–48, the proposed regulations allow a partnership to elect to apply section 1045 if the partnership held QSB stock for more than six months, sold such QSB stock, and purchased other QSB stock (replacement QSB stock) within 60 days of the sale. If the partnership makes an election under section 1045, all eligible partners of the partnership must defer their distributive shares of the partnership section 1045 gain from the partnership's sale of the QSB stock. No separate election is required of the partners. Partnership section 1045 gain equals the partnership's gain from the sale of the QSB stock reduced by the greater of: (A) The gain from the sale of the QSB stock that is treated as ordinary income, or (B) the excess of the amount realized by the partnership on the sale over the cost of any replacement QSB stock purchased by the partnership during the 60-day period beginning on the date of the sale.

2. Election Procedures and Notification

The proposed regulations require the partnership to make the section 1045 election on the partnership's timely filed return (including extensions) for the taxable year during which the partnership sells the QSB stock. In addition, the partnership must follow the procedures of Rev. Proc. 98–48.

When a partnership makes the election, the proposed regulations require the partnership to notify all

partners that it has made the election, and separately state each partner's distributive share of the partnership section 1045 gain under section 702. Each partner must determine if it is an eligible partner and report the partner's distributive share of gain, including gain not recognized, on Schedule D of the partner's Federal income tax return.

C. Partner Election Under Section 1045

1. General Rule

Also consistent with Rev. Proc. 98–48, the proposed regulations allow an eligible partner to make a section 1045 election with respect to the partner's share of gain from the partnership's sale of QSB stock if the partnership does not make a section 1045 election or purchase replacement QSB stock within the statutory time period. The election may be made if the partnership either replaces none of the relinquished QSB stock or replaces some but not all of the relinquished QSB stock. For example, relinquished QSB stock can be partially replaced by the partnership and partially replaced by the partner if section 1045 elections are made by both the partnership and the partner. If a partner makes a section 1045 election, the partner recognizes its distributive share of the gain from the sale of the relinquished QSB stock only to the extent of the greater of: (1) The gain that is treated as ordinary income, or (2) the excess of the partner's share of the amount realized by the partnership on the sale of the QSB stock over the cost of any replacement QSB stock purchased by the partner during the 60-day statutory period.

A partnership that has sold QSB stock should promptly notify its partners when it does not intend to make a section 1045 election with respect to the sale. Prompt notification will allow partners who intend to make separate section 1045 elections time to purchase replacement QSB stock within 60 days of the sale of the relinquished QSB stock and to make timely section 1045 elections. However, the proposed regulations do not impose a requirement on partnerships to provide such notification. The IRS and Treasury Department believe that it is more appropriate for the partners to decide (for example, in the partnership agreement) whether, and to what extent, the partnership must provide such notification.

2. Election Procedures

The proposed regulations provide that a partner making an election under section 1045 with respect to its distributive share of gain on the partnership's sale of QSB stock must do so on the partner's timely filed federal income tax return (including extensions) for the taxable year in which such gain is taken into account. In addition, the partner must follow the procedures of Rev. Proc. 98–48.

D. Basis Adjustments

The proposed regulations provide rules regarding adjustments to the eligible partner's basis in the partnership interest and the partnership's basis in the replacement QSB stock. Under these rules, if the partnership makes a section 1045 election, then the eligible partner may not increase its outside basis by the amount of gain that is not recognized under section 1045. In addition, the partnership is required to reduce its basis in the replacement QSB stock by the amount of gain that is not recognized by its partners. The adjustment to the partnership's inside basis in the replacement QSB stock is similar to a basis adjustment under section 743(b). These rules are necessary to preserve (in the replacement QSB stock and the partnership interest) the deferred gain on the sale of the relinquished QSB stock.

As explained above, a partner's basis in a partnership interest is not increased by any gain that is deferred by reason of a *partnership* section 1045 election. In contrast, a partner's basis in a partnership interest is increased by any gain that is deferred by reason of a *partner* section 1045 election. A partner must reduce the basis of any replacement QSB stock the partner purchases by the amount of gain that is not recognized by reason of a *partner* section 1045 election.

To allow the partnership to make the appropriate adjustments to the basis of the replacement QSB stock, the proposed regulations require any partner who recognizes all or part of the partner's distributive share of partnership section 1045 gain to notify the partnership of the amount of the partnership section 1045 gain that was recognized. In the absence of notification, the partnership must presume that the partner deferred recognition of the partnership section 1045 gain and decrease its basis in the replacement QSB stock by the partner's distributive share of partnership section 1045 gain until such time as the partner provides notification of the amount recognized by the partner. However, if the partnership knows that one of its partners was, during any period in which the partnership held the QSB stock, classified as a corporation for federal tax purposes, then the partnership may presume that the partner did not defer recognition of the partnership section 1045 gain even in the absence of a notification by the partner.

E. Distribution of QSB Stock

Consistent with section 1202(h) and the legislative history underlying that section, the proposed regulations provide that, if a partnership distributes QSB stock to an eligible partner, then the eligible partner is treated as having acquired such stock in the same manner as the partnership and having held such stock during any continuous period immediately preceding the distribution during which it was held by the partnership. However, the amount of gain on the sale of such distributed QSB stock that the partner can defer cannot exceed the distribution nonrecognition limitation. For this purpose, the distribution nonrecognition limitation is equal to the partner's section 1045 amount realized, reduced by the partner's section 1045 adjusted basis. The proposed regulations provide rules for determining the partner's section 1045 amount realized and the partner's section 1045 adjusted basis in the case of a liquidating distribution, a nonliquidating distribution of all of the QSB stock (of the same type), and other nonliquidating distributions.

These rules follow the legislative history's directive that a partner may not treat stock distributed by a partnership as QSB stock to the extent that the partner's share of the distributed stock exceeds the partner's interest in the partnership at the time the partnership acquired the stock. Under the proposed regulations, the amount of gain that a distributee partner may defer on the sale of distributed QSB stock will be no more than (but in the case of QSB stock received in certain nonliquidating distributions may be less than) the amount of gain that the partner would have been able to defer in the absence of the distribution.

The IRS and Treasury Department considered an alternative approach for determining the distribution nonrecognition limitation for sales of QSB stock following a nonliquidating distribution to a partner. Under this alternative approach, the distribution nonrecognition limitation would be determined by reference to the maximum amount of gain that the partner would have been able to defer if the partnership had not distributed any QSB stock of the type sold, but instead had sold all of that QSB stock for a per share price equal to the per share price received on the actual sale of the distributed QSB stock by the

partner. Due to the complexity of this alternative approach, it was rejected and is not included in the proposed regulations. The IRS and Treasury Department request comments on the extent to which refinements of the distribution nonrecognition limitation applicable to sales of distributed QSB stock are appropriate.

F. Contribution of QSB Stock

The proposed regulations provide that a contribution of QSB stock to a partnership in a transaction to which section 721(a) applies does not cause the contributing partner to recognize any gain that was previously deferred under section 1045. However, the QSB stock, once contributed, is no longer QSB stock in the hands of the partnership because the partnership has not acquired the stock at original issue within the meaning of section 1202(c)(1)(B). See also H.R. Rep. No. 103–111, 103d Cong., 1st Sess. 602 (1993).

G. Proposed Effective Date

The regulations are proposed to apply to sales of QSB stock on or after the date final regulations are published in the **Federal Register**.

Effect on Other Documents

The following publication will be amplified for partners and partnerships beginning on or after the date these regulations are published as final regulations in the **Federal Register:**

Rev. Proc. 98–48 (1998–2 C.B. 367).

Special Analyses

It has been determined that this notice of proposed rulemaking is not a significant regulatory action as defined in Executive Order 12866. Therefore, a regulatory assessment is not required. It also has been determined that section 553(b) of the Administrative Procedure Act (5 U.S.C. chapter 5) does not apply to these regulations. It is hereby certified that the collection of information in these regulations will not have a significant economic impact on a substantial number of small entities. This certification is based upon the fact that QSB stock is not held by a substantial number of small entities and that the time required to make the election is estimated to average 1 hour. Therefore, a Regulatory Flexibility Analysis under the Regulatory Flexibility Act (5 U.S.C. chapter 6) is not required. Pursuant to section 7805(f) of the Code, this notice of proposed rulemaking will be submitted to the Chief Counsel for Advocacy of the Small Business Administration for comment on its impact on small business.

Comments and Public Hearing

Before these proposed regulations are adopted as final regulations, consideration will be given to any written (a signed original and eight (8) copies) or electronic comments that are submitted timely to the IRS. The IRS and Treasury Department request comments on the clarity of the proposed rules and how they can be made easier to understand. All comments will be available for public inspection and copying.

A public hearing has been scheduled for Tuesday, November 2, 2004, at 10 a.m. in the IRS Auditorium, Internal Revenue Building, 1111 Constitution Avenue, NW., Washington, DC. Due to building security procedures, visitors must enter at the Constitution Avenue entrance. In addition, all visitors must present photo identification to enter the building. Because of access restrictions, visitors will not be admitted beyond the immediate entrance area more than 15 minutes before the hearing starts. For information about having your name placed on the building access list to attend the hearing, see the **FOR FURTHER INFORMATION CONTACT** section of this preamble.

The rules of 26 CFR 601.601(a)(3) apply to the hearing. Persons who wish to present oral comments at the hearing must submit written or electronic comments and an outline of the topics to be discussed and the time to be devoted to each topic (signed original and eight (8) copies) by October 11, 2004. A period of 10 minutes will be allotted to each person for making comments. An agenda showing the scheduling of the speakers will be prepared after the deadline for receiving outlines has passed. Copies of the agenda will be available free of charge at the hearing.

Drafting Information

The principal authors of these regulations are Charlotte Chyr and Jian H. Grant, Office of the Associate Chief Counsel (Passthroughs and Special Industries). However, other personnel from the IRS and Treasury Department participated in their development.

List of Subjects

26 CFR Part 1

Income taxes, Reporting and recordkeeping requirements.

26 CFR Part 301

Employment taxes, Estate taxes, Excise taxes, Gift taxes, Income taxes, Penalties, Reporting and recordkeeping requirements.

Proposed Amendments to the Regulations

Accordingly, 26 CFR part 1 is proposed to be amended as follows:

PART 1—INCOME TAXES

Paragraph 1. The authority citation for part 1 continues to read, in part, as follows:

Authority: 26 U.S.C. 7805 * * *

Par. 2. Section 1.1045–1 is added to read as follows:

§ 1.1045–1 Application to partnerships.

(a) *General rules*—(1) *Definition of QSB stock—In general.* For purposes of section 1045 and this section, *qualified small business stock* (QSB stock) has the meaning provided in section 1202(c). For purposes of section 1045 and this section, the term *QSB stock* does not include an interest in a partnership that purchases or holds QSB stock. (For further guidance, *see Example 1* and *Example 2* of paragraph (g) of this section.)

(2) *Eligible partner*—(i) *In general.* For purposes of this section, an eligible partner with respect to QSB stock is a taxpayer other than a corporation who holds an interest in a partnership on the date the partnership acquires the QSB stock and at all times thereafter before the partnership sells or distributes the QSB stock.

(ii) *Acquisition by gift or at death.* For purposes of this section, a taxpayer who acquires from an eligible partner by gift or at death an interest in a partnership that holds QSB stock is treated as having held the acquired interest in the partnership during the period the eligible partner held the interest in the partnership. (For further guidance, *see Example 6* of paragraph (g) of this section.)

(iii) *Tiered partnership*—(A) *Generally.* If a partnership (upper-tier partnership), holds an interest in another partnership (lower-tier partnership) that holds QSB stock, then, for purposes of this paragraph (a)(2), the upper-tier partnership's ownership of the lower-tier partnership is ignored and each partner of the upper-tier partnership is treated as owning the interest in the lower-tier partnership directly. The partner of the upper-tier partnership is treated as owning the interest in the lower-tier partnership during the period in which both—

(*1*) The partner of the upper-tier partnership held an interest in the upper-tier partnership; and

(*2*) The upper-tier partnership held an interest in the lower-tier partnership. (For further guidance, *see Example 3* of paragraph (g) of this section.)

(B) *Multiple tiers of partnership.* Principles similar to those described in paragraph (a)(2)(iii)(A) of this section apply where a taxpayer holds the interest in the lower-tier partnership through multiple tiers of partnerships.

(3) *Nonrecognition limitation*—(i) *In general.* For purposes of this section, the amount of gain that an eligible partner does not recognize under paragraphs (b)(1) and (c)(1) of this section cannot exceed the nonrecognition limitation. For this purpose, the nonrecognition limitation is equal to the product of—

(A) The partnership's realized gain from the sale of the QSB stock, determined without regard to any basis adjustment under section 734(b) or 743(b) (other than basis adjustments described in paragraph (b)(3)(ii) of this section); and

(B) The eligible partner's smallest percentage interest in the partnership's income, gain, or loss with respect to the QSB stock that was sold. (For further guidance, *see Example 4* of paragraph (g) of this section.)

(ii) *Eligible partner's smallest percentage interest.* In determining an eligible partner's smallest percentage interest in the partnership's income, gain, or loss with respect to QSB stock, reductions in the partner's interest that occur solely as a result of a distribution of QSB stock to the partner are not taken into account.

(b) *Partnership election*—(1) *General rule.* A partnership that holds QSB stock for more than six months, sells such QSB stock, and purchases other QSB stock (replacement QSB stock), within 60 days beginning on the date of the sale may elect to apply section 1045. For purposes of this paragraph (b)(1), a purchase of replacement QSB stock by a partner is not treated as a purchase of replacement QSB stock by the partnership. If the partnership elects to apply section 1045, then, subject to the provisions of paragraph (a)(3) of this section, each eligible partner does not recognize the partner's distributive share of any partnership section 1045 gain. For this purpose, partnership section 1045 gain equals the partnership's gain from the sale of the QSB stock reduced by the greater of—

(i) The amount of the gain from the sale of the QSB stock that is treated as ordinary income; or

(ii) The excess of the amount realized by the partnership on the sale over the cost of any replacement QSB stock purchased by the partnership during the 60-day period beginning on the date of the sale (excluding the cost of any replacement QSB stock that is otherwise taken into account under section 1045).

(2) *Partner's share of partnership section 1045 gain.* A partnership must allocate partnership section 1045 gain to the partners in the same proportion as the partnership's entire gain from the sale of the QSB stock is allocated to the partners. For this purpose, the partnership's gain from the sale of QSB stock and the partner's distributive share of that gain are determined without regard to basis adjustments under section 743(b) and paragraph (b)(3)(ii) of this section.

(3) *Basis adjustments*—(i) *Partner's interest in a partnership.* Notwithstanding section 705(a)(1), the adjusted basis of a partner's interest in a partnership is not increased by gain from a partnership's sale of QSB stock that is not recognized by the partner under paragraph (b)(1) of this section.

(ii) *Partnership's replacement QSB stock.* The basis of a partnership's replacement QSB stock is reduced (in the order acquired) by the amount of gain from the partnership's sale of QSB stock that is not recognized by an eligible partner. The basis adjustment with respect to any amount described in this paragraph (b)(3)(ii) constitutes an adjustment to the basis of the partnership's replacement QSB stock with respect to that partner only. The effect of such a basis adjustment is determined under the principles of § 1.743–1(g), (h), and (j). For purposes of this paragraph (b)(3)(ii), the partnership must presume that a partner did not recognize that partner's distributive share of QSB gain until such time as the partner provides to the partnership the notification described in paragraph (b)(4)(ii) of this section. However, if the partnership knows that a particular partner is classified, for Federal tax purposes, as a corporation during any period in which the partnership held the QSB stock, then the partnership may presume that the partner did not defer recognition of the partnership section 1045 gain, even in the absence of a notification by the partner.

(4) *Notice requirements*—(i) *Partnership notification to partners.* A partnership that makes the election described in paragraph (b)(1) of this section must notify all of its partners of the election in accordance with the applicable forms and instructions and separately state each partner's distributive share of gain from the sale of QSB stock under section 702. Each partner shall determine whether the partner is an eligible partner within the meaning of paragraph (b)(1) of this section and report the partner's distributive share of gain from the partnership's sale of QSB stock, including gain not recognized, on Schedule D of the partner's federal income tax return.

(ii) *Partner notification to partnership.* Any partner that must recognize all or part of the partner's distributive share of partnership section 1045 gain must notify the partnership, in writing, of the amount of partnership section 1045 gain that is recognized by the partner. (For further guidance concerning paragraph (b) of this section, *see Example 4* through *Example 7* of paragraph (g) of this section.)

(c) *Partner election*—(1) *In general.* If an eligible partner of a partnership that sells QSB stock purchases replacement QSB stock during the 60-day period beginning on the date of the partnership's sale of the QSB stock, then the partner may elect to apply section 1045. For purposes of this paragraph (c)(1), a purchase of replacement QSB stock by the partnership is not treated as a purchase of replacement QSB stock by a partner. An eligible partner that elects to apply section 1045 must recognize its distributive share of gain from the partnership's sale of QSB stock only to the extent of the greater of—

(i) The amount of the partner's distributive share of the gain from the sale of the QSB stock that is treated as ordinary income; or

(ii) The excess of the partner's share of the amount realized by the partnership on the sale of the QSB stock (excluding any QSB stock that was replaced by the partnership) over the cost of any replacement QSB stock purchased by the partner during the 60-day period beginning on the date of the partnership's sale of the QSB stock (excluding the cost of any replacement QSB stock that is otherwise taken into account under section 1045).

(2) *Partner's share of amount realized by partnership.* The partner's share of the amount realized by the partnership shall bear the same proportion to the amount realized by the partnership on the sale of the QSB stock (excluding the cost of any replacement QSB stock) as the partner's distributive share of the partnership's realized gain from the sale of the QSB stock bears to the partnership's realized gain on the sale of the QSB stock. For this purpose, the partnership's realized gain from the sale of QSB stock and the partner's distributive share of that gain are determined without regard to basis adjustments under section 743(b) and paragraph (b)(3)(ii) of this section.

(3) *Basis adjustments*—(i) *Partner's interest in a partnership.* Under section 705(a)(1), the adjusted basis of a partner's interest in a partnership is increased by the amount of gain that is not recognized by an eligible partner

pursuant to paragraph (c)(1) of this section.

(ii) *Partner's replacement QSB stock.* A partner's basis in any replacement QSB stock that is purchased by the partner during the 60-day period described in paragraph (c)(1) of this section must be reduced (in the order acquired) by the partner's distributive share of the gain on the sale of the partnership's QSB stock that is not recognized by the partner pursuant to paragraph (c)(1) of this section. (For further guidance concerning this paragraph (c), *see Example 8* through *Example 10* of paragraph (g) of this section.)

(d) *Partnership distribution of QSB stock to an eligible partner*—(1) *In general.* Subject to paragraphs (d)(2) and (3) of this section, in the case of a partnership distribution of QSB stock to an eligible partner within the meaning of paragraph (a)(2) of this section, the eligible partner shall be treated as—

(i) Having acquired such stock in the same manner as the partnership; and

(ii) Having held such stock during any continuous period immediately preceding the distribution during which it was held by the partnership. (For further guidance concerning this paragraph (d), *see Example 11* and *Example 12* of paragraph (g) of this section.)

(2) *Eligibility under section 1202(c).* Paragraph (d)(1) of this section does not apply unless all eligibility requirements with respect to the QSB stock as defined in section 1202(c) are met by the distributing partnership with respect to its investment in the QSB stock.

(3) *Distribution nonrecognition limitation*—(i) *Generally.* The amount of gain that an eligible partner does not recognize on the sale of QSB stock (the relinquished QSB stock) that was distributed by the partnership to the partner cannot exceed the distribution nonrecognition limitation. For this purpose, the nonrecognition limitation is—

(A) The partner's section 1045 amount realized; reduced by

(B) The partner's section 1045 adjusted basis.

(ii) *Section 1045 amount realized*—(A) *QSB stock received in liquidation of partner's interest and in certain nonliquidating distributions.* If a partner receives relinquished QSB stock from the partnership in a distribution in liquidation of the partner's interest in the partnership or as part of a series of related distributions by the partnership in which the partnership distributes all of the partnership's QSB stock of a particular type, then the partner's section 1045 amount realized is the partner's amount realized from the sale of the relinquished QSB stock, multiplied by a fraction—

(*1*) The numerator of which is the partner's smallest percentage interest (prior to the distribution) in the partnership's income, gain, or loss with respect to the type of QSB stock sold by the partner; and

(*2*) The denominator of which is the partner's percentage interest in that type of partnership QSB stock immediately after the distribution (determined under paragraph (d)(3)(iv) of this section).

(B) *QSB stock received in other distributions.* If a partner receives relinquished QSB stock in a distribution from the partnership that is not described in paragraph (d)(3)(ii)(A) of this section, the partner's section 1045 amount realized is the partner's amount realized from the sale of the relinquished QSB stock multiplied by the partner's smallest interest (prior to the distribution) in the partnership's income, gain, or loss with respect to such stock.

(iii) *Section 1045 adjusted basis*—(A) *QSB stock received in liquidation of partner's interest and in certain nonliquidating distributions.* If a partner receives relinquished QSB stock from the partnership in a distribution in liquidation of the partner's interest in the partnership or as part of a series of related distributions by the partnership in which the partnership distributes all of the partnership's QSB stock of a particular type, then the partner's section 1045 adjusted basis is the product of—

(*1*) The partnership's basis in all of the QSB stock of the type distributed (without regard to basis adjustments under section 734(b) or 743(b), other than basis adjustments described in paragraph (b)(3)(ii) of this section);

(*2*) The partner's smallest interest (prior to the distribution) in the partnership's income, gain, or loss with respect to such stock; and

(*3*) The proportion of the distributed QSB stock that was sold by the partner.

(B) *QSB stock received in other distributions.* If a partner receives relinquished QSB stock in a distribution from the partnership that is not described in paragraph (d)(3)(iii)(A) of this section, the partner's section 1045 adjusted basis is the product of—

(*1*) The partnership's basis in the QSB stock sold by the partner (without regard to basis adjustments under section 734(b) or 743(b), other than basis adjustments described in paragraph (b)(3)(ii) of this section); and

(*2*) The partner's smallest interest (prior to the distribution) in the partnership's income, gain, or loss with respect to such stock.

(iv) *Partner's percentage interest in distributed QSB stock.* For purposes of this paragraph (d)(3), a partner's percentage interest in a type of QSB stock immediately after a partnership distribution is the value (as of the date of the distribution) of the QSB stock distributed to the partner divided by the value (as of the date of the distribution) of all of that type of QSB stock that was acquired by the partnership.

(v) *QSB stock of the same type.* For purposes of this paragraph (d)(3), QSB stock will be of the same type as the distributed QSB stock if it has the same issuer and the same rights and preferences as the distributed QSB stock and was acquired by the partnership at its original issue.

(e) *Contribution of QSB stock or replacement QSB stock to a partnership.* Section 721 applies to a contribution of QSB stock to a partnership by a taxpayer other than a corporation. Except as provided in section 721(b), any gain that was not recognized by the taxpayer under section 1045 is not recognized when the taxpayer contributes QSB stock to a partnership in exchange for a partnership interest in the hands of the taxpayer. Stock that is contributed to a partnership is not QSB stock in the hands of the partnership because the partnership did not acquire the stock at original issue. (For further guidance, *see Example 13* of paragraph (g) of this section.)

(f) *Time and manner of making election.* A partnership making an election under section 1045 (as described under paragraph (b)(1) of this section) must do so on the partnership's timely filed (including extensions) return for the taxable year during which the sale of QSB stock occurs. A partner making an election under section 1045 (as described under paragraph (c)(1) of this section) must do so on the partner's timely filed (including extensions) Federal income tax return for the taxable year during which the partner's distributive share of the partnership's gain from the sale of the QSB stock is taken into account under section 706. In addition, a partnership or partner making an election under section 1045 must follow the administrative procedures issued for making such elections. (For further guidance, see Rev. Proc. 98–48 (1998–2 C.B. 367) and § 601.601(d)(2)(ii)(b) of this chapter.)

(g) *Examples.* The provisions of this section are illustrated by the following examples:

Example 1. Acquisition of a partnership interest as replacement property. On January

1, 2006, A, an individual, X, a corporation, and Y, a corporation, form PRS, a partnership. A, X, and Y each contribute $25 to PRS and agree to share all partnership items equally. PRS purchases QSB stock on February 1, 2006, and subsequently sells the QSB stock on November 4, 2006, for $150. PRS realizes $75 of gain from the sale of the QSB stock (none of which is treated as ordinary income) and allocates $25 of gain to each of A, X, and Y. On November 30, 2006, A contributes $50 to ABC, a partnership, in exchange for an interest in ABC (instead of purchasing QSB stock). ABC then purchases QSB stock for $50 on December 1, 2006. A's acquisition of the additional partnership interest is not treated as a purchase of replacement QSB stock for purposes of section 1045.

Example 2. Sale of a partnership interest. The facts are the same as in *Example 1,* except that PRS does not sell its QSB stock. Instead, on November 4, 2006, A sells the PRS interest for $50x, realizing $25 of capital gain. On November 30, 2006, A purchases $50 of new QSB stock. Under paragraph (a)(1) of this section, the sale of an interest in a partnership that holds QSB stock is not treated as a sale of QSB stock. Therefore, A may not elect to apply section 1045 with respect to A's $25 of gain from the sale of the PRS interest.

Example 3. Eligible and non-eligible partners of tiered partnership. On January 1, 2006, A, an individual, and B, an individual, contribute cash to UTP, (upper-tier partnership) for equal partnership interests. On February 1, 2006, UTP and C, an individual, contribute cash to LTP, (lower-tier partnership) for equal partnership interests. On March 1, 2006, LTP purchases QSB stock. On April 1, 2006, D, an individual, joins UTP by contributing cash to UTP for a 1/3 interest in UTP. On December 1, 2006, LTP sells the QSB stock. Under paragraph (a)(2)(iii) of this section, A, B, and D are treated as owning an interest in LTP during the period in which each of the partners held an interest in UTP and UTP held an interest in LTP. Therefore, under paragraph (a)(2)(i) of this section, A and B are eligible partners, and D is not an eligible partner.

Example 4. Partnership sale of QSB stock and purchase and sale of replacement QSB stock. (i) Assume the same facts as in *Example 1,* except that PRS purchases replacement QSB stock for $135 on December 15, 2006. On its timely filed return for the taxable year during which the sale of the relinquished QSB stock occurs, PRS makes an election to apply section 1045. PRS knows that X and Y are corporations. On March 30, 2007, PRS sells the replacement QSB stock for $165. PRS realizes $30 of capital gain from the sale of the replacement QSB stock and allocates $10 of gain to each of A, X, and Y.

(ii) Under paragraph (b)(1) of this section, the partnership section 1045 gain is $60 ($75 gain less $15 ($150 amount realized on the sale of the relinquished QSB stock less $135 cost of the replacement QSB stock)). This amount must be allocated among the partners in the same proportions as the entire gain from the sale of the QSB stock is allocated to the partners, ⅓ ($20) to A, ⅓ ($20) to X, and ⅓ ($20) to Y.

(iii) Because neither X nor Y are eligible partners under paragraph (a)(2) of this section, X and Y must each recognize its $25 distributive share of partnership gain from the sale of the QSB stock. Because A is an eligible partner under paragraph (a)(2) of this section, and because A is bound by the election by PRS to apply section 1045, A defers recognition of A's $20 distributive share of partnership section 1045 gain. A is not required to separately elect to apply section 1045. A must recognize A's remaining $5 distributive share of the partnership's gain from the sale of the QSB stock.

(iv) Under section 705(a)(1)(A), the adjusted bases of X's and Y's interests in PRS are each increased by $25. Under section 705(a)(1)(A) and paragraph (b)(3)(i) of this section, the adjusted basis of A's interest in PRS is not increased by the $20 of partnership section 1045 gain that was not recognized by A, but is increased by A's remaining $5 distributive share of gain.

(v) PRS must decrease its basis in the replacement QSB stock by the $20 of partnership section 1045 gain that was allocated to A. This basis reduction is a reduction with respect to A only. PRS then adjusts A's distributive share of gain from the sale of the replacement QSB stock to reflect the effect of A's basis adjustment under paragraph (b)(3)(ii) of this section. In accordance with the principles of § 1.743–1(j)(3), the amount of A's gain from the sale of the replacement QSB stock in which A has a $20 negative basis adjustment equals $30 (A's share of PRS's gain from the sale of the replacement QSB stock ($10), increased by the amount of A's negative basis adjustment for the replacement stock ($20)). Accordingly, upon the sale of the replacement QSB stock, A recognizes $30 of gain, and X and Y each recognize $10 of gain.

Example 5. Sale of partnership interest while partnership holds QSB stock. Assume the same facts as in Example 4, except that A sells A's interest in PRS to B, an individual, on March 1, 2006. B is not an eligible partner under paragraph (a)(2)(i) of this section, because B did not hold an interest in PRS on the date PRS originally acquired the QSB stock. Therefore, B must recognize B's distributive share of partnership section 1045 gain.

Example 6. Death of partner while partnership holds QSB stock. Assume the same facts as in *Example 4,* except that A dies on March 1, 2006, and B inherits A's interest in PRS. Under paragraph (a)(2)(ii) of this section, B is treated as holding the interest in PRS during the period that A held the interest in PRS. Therefore, B is an eligible partner under paragraph (a)(2)(i) of this section. Accordingly, B defers recognition of B's distributive share of the partnership section 1045 gain on the sale of the QSB stock.

Example 7. Partnership sale of QSB stock and partner purchase of replacement QSB stock. (i) Assume the same facts as in Example 4, except that PRS does not make an election under section 1045 with respect to the sale of the QSB stock. On November 30, 2006, A, an eligible partner under paragraph (a)(2) of this section, purchases replacement QSB stock for $50. A elects to apply section 1045 on A's timely filed return for the taxable year that A is required to include A's distributive share of PRS's gain from the sale of the relinquished QSB stock.

(ii) Under paragraph (c)(2) of this section, A's share of the amount realized from PRS's sale of the QSB stock is $50 (the amount which bears the same proportion to the total amount realized by the partnership on the sale of the QSB stock ($150) as A's share of the gain from the sale of the QSB stock ($25) bears to the total gain realized by the partnership on the sale of the QSB stock ($75)). Because A purchased, within 60 days of PRS's sale of the QSB stock, replacement QSB stock for a cost equal to A's share of the partnership's amount realized on the sale of the QSB stock, and because A made a valid election to apply section 1045, A defers recognition of A's $25 distributive share of gain from PRS's sale of the QSB stock. Under section 705(a)(1) and paragraph (c)(3)(i) of this section, the adjusted basis of A's interest in PRS is increased by $25. Under paragraph (c)(3)(ii) of this section, A's basis in the replacement QSB stock is $25 ($50 cost minus $25 nonrecognition amount).

Example 8. Election by partner; replacement by partnership. Assume the same facts as in *Example 7,* except that PRS purchases replacement QSB stock on December 31, 2006, but does not make an election to apply section 1045. A makes an election to apply section 1045, but does not purchase any replacement QSB stock during the 60-day period beginning on the date of PRS's sale of the QSB stock. Because the requirements of neither paragraph (b)(1) nor paragraph (c)(1) of this section has been satisfied, A must recognize all of A's distributive share of the gain from PRS's sale of the QSB stock.

Example 9. Partial replacement by partnership; partial replacement by partner. (i) On January 1, 2006, A, an individual, and X, a corporation, form PRS, a partnership. A and X each contribute $50 to PRS and agree to share all partnership items equally. PRS purchases QSB stock on February 1, 2006, for $100 and subsequently sells the QSB stock on January 31, 2008, for $300. PRS realizes $200 of gain from the sale of the QSB stock (none of which is treated as ordinary income) and allocates $100 of gain to each of A and X. On February 10, 2008, PRS purchases replacement QSB stock for $220. On March 20, 2008, A purchases replacement QSB stock for $40. Both A and PRS make valid elections to apply section 1045.

(ii) Under paragraph (b)(1) of this section, partnership section 1045 gain is $120 ($200 less $80 ($300 amount realized on the sale of the relinquished QSB stock minus $220 cost of the replacement QSB stock)). This amount is allocated among the partners in the same proportions as the entire gain from the sale of the QSB stock is allocated to the partners, ½ to A ($60), and ½ to X ($60). Because A is an eligible partner, A defers recognition of A's $60 distributive share of partnership section 1045 gain.

(iii) A also made a valid section 1045 election and purchased, within 60 days of

PRS's sale of the QSB stock, replacement QSB stock. Therefore, under paragraph (c)(1) of this section, A may defer a portion of A's distributive share of the remaining gain from the partnership's sale of the QSB stock. A must recognize that remaining gain, however, to the extent that A's share of the amount realized by PRS on the sale of the QSB stock (excluding the QSB stock that was replaced by PRS) exceeds the cost of the replacement QSB stock purchased by A during the 60-day period following the sale of the QSB stock. The amount realized by PRS on the sale of the QSB stock (excluding the QSB stock that was replaced by PRS) is $80 ($300 minus $220). Under paragraph (c)(2) of this section, A's share of that amount realized is $40 (50/100 (A's share of the gain from the sale of the QSB stock) multiplied by $80). Because the replacement QSB stock purchased by A cost $40, A defers recognition of all of the remaining gain from the sale of the QSB stock.

(iv) The adjusted basis of A's interest in PRS is not increased by the gain that was not recognized pursuant to paragraph (b)(1) of this section, $60, but is increased by the gain that was not recognized pursuant to paragraph (c)(1) of this section, $40. See paragraphs (b)(3)(i) and (c)(3)(i) of this section. PRS must decrease its basis in the replacement QSB stock by the $60 of partnership section 1045 gain that was allocated to A. See paragraph (b)(3)(ii) of this section. A must decrease A's basis in the replacement QSB stock purchased by A by the $40 not recognized pursuant to paragraph (c)(1) of this section. See paragraph (c)(3)(ii) of this section.

Example 10. Change in partner's interest in partnership while partnership holds QSB stock. (i) Assume the same facts as in *Example 9,* except that, on August 2, 2006, A sells a 25 percent interest in PRS to Z. On July 10, 2007, A repurchases the 25 percent interest from Z for $50. Assume that PRS makes a timely election under section 754 for the taxable year during which A purchases Z's PRS interest and that, under section 743(b), A has a positive basis adjustment of $25.

(ii) PRS allocates the $200 of realized gain from the sale of the QSB stock $100 to A and $100 to X. However, A has a positive basis adjustment of $25; therefore, A's share of the gain is reduced to $75. Because A is an eligible partner under paragraph (a)(2) of this section, A may defer recognition of A's distributive share of gain from the sale of the QSB stock subject to the nonrecognition limitation described in paragraph (a)(3) of this section. The smallest interest that A held in PRS during the time that PRS held the QSB stock is 25 percent. Under the nonrecognition limitation, A may not defer more than 25 percent of the partnership gain realized from the sale of the QSB stock (determined without regard to any basis adjustment under section 734(b) or section 743(b), other than a basis adjustment described in paragraph (b)(3)(ii) of this section). Because the partnership's realized gain determined without regard to A's basis adjustment under section 743(b) is $200, A may defer recognition of $50 (25% of $200) of the gain from the sale of the QSB stock. A must recognize the remaining $25 of that gain.

Example 11. Sale by partner of QSB stock received in a liquidating distribution. (i) On January 1, 2006, A, an individual, and X, a corporation, form PRS, a partnership. A and X each contribute $150 to PRS and agree to share all partnership items equally. PRS purchases QSB stock on February 1, 2006, for $300. On May 1, 2006, when the QSB stock has appreciated in value to $400, A contributes $100 to PRS, increasing A's interest in PRS's income, gains, losses, deductions, and credits to 60 percent. On June 1, 2009, when the QSB stock is still worth $400, PRS makes a liquidating distribution of $300 worth of QSB stock to A. Under section 732, A's basis in the distributed QSB stock is $250. A sells the QSB stock on August 4, 2009, for $600, realizing a gain of $350 (none of which is treated as ordinary income). A purchases replacement QSB stock on August 30, 2009, for $550, and makes a valid election under section 1045 with respect to the QSB stock.

(ii) A is an eligible partner under paragraph (a)(2)(i) of this section. Therefore, under paragraph (d)(1) of this section, A is treated as having acquired the distributed QSB stock in the same manner as PRS and as having held the QSB stock since February 1, 2006, its original issue date. Because A purchased, within 60 days of A's sale of the QSB stock, replacement QSB stock, A is eligible to defer a portion of A's gain from the sale of the QSB stock. A must recognize gain, however, to the extent that A's amount realized on the sale of the QSB stock, $600, exceeds the cost of the replacement QSB stock purchased by A during the 60-day period beginning on the date of the sale of the relinquished QSB stock, $550. Accordingly, A must recognize $50 of the gain from the sale of the QSB stock. A defers recognition of the remaining $300 of gain to the extent that such gain does not exceed the distribution nonrecognition limitation.

(iii) Under paragraph (d)(3)(ii) of this section, A's nonrecognition limitation with respect to the sale of the QSB stock is A's section 1045 amount realized with respect to the stock, reduced by A's section 1045 adjusted basis with respect to the stock. A's amount realized from the sale is the product of A's amount realized from the sale, $600; and a fraction:

(*1*) the numerator of which is A's smallest percentage interest in PRS's income, gain, or loss with respect to such stock, 50%; and

(*2*) the denominator of which is A's percentage interest in that type of partnership QSB stock immediately after the distribution, 75% (the value of the stock distributed to A, $300, divided by the value of all QSB stock of that type acquired by PRS, $400).

Therefore, A's section 1045 amount realized is $400 ($600 multiplied by 50/75). Because PRS distributed the QSB stock to A in liquidation of A's interest in PRS, A's section 1045 adjusted basis is the product of PRS's basis in all of the QSB stock of the type distributed, $300; A's smallest interest (prior to the distribution) in PRS's income, gain, or loss with respect to QSB stock of the type distributed, 50%; and the percentage of the distributed QSB stock that was sold by A, 100%. Therefore, A's section 1045 adjusted basis is $150 (the product of $300, 50%, and 100%)) and A's nonrecognition limitation amount on the sale of the QSB stock is $250 ($400 section 1045 amount realized minus $150 section 1045 adjusted basis). Accordingly, A defers recognition of $250 of the remaining $300 gain from the sale of the QSB stock.

(iv) A's basis in the replacement QSB stock is $300 (cost of the replacement stock, $550, reduced by the gain not recognized under section 1045, $250).

Example 12. Sale by partner of QSB stock received in a nonliquidating distribution. (i) The facts are the same as in *Example 11,* except that, on June 1, 2009, PRS distributes only $200 of the QSB stock to A, reducing A's interest in PRS from 60% to 33%. PRS's basis in the distributed QSB stock is $150. On November 1, 2009, A sells for $250 the QSB stock distributed by PRS to A and purchases, within 60 days of the date of sale of the relinquished QSB stock, replacement QSB stock for $250. On December 1, 2009, PRS sells all of its QSB stock for $250 and purchases, within 60 days of the date of the sale of the relinquished QSB stock, replacement QSB stock for $250. A makes a timely election to apply section 1045 with respect to its sale of the distributed QSB stock and PRS makes a timely election to apply section 1045 with respect to its sale of the QSB stock.

(ii) Under section 732, A's basis in the distributed QSB stock is $150. Therefore, A realizes a gain on the sale of the distributed QSB stock of $100. Because A made a valid election to apply section 1045 to the sale, and because A purchased, within 60 days of A's sale of the QSB stock, replacement QSB stock at a cost equal to the amount realized on the sale of the distributed QSB stock, A defers recognition of the gain from the sale of the QSB stock to the extent that such gain does not exceed the distribution nonrecognition limitation.

(iii) Under paragraph (d)(3) of this section, the nonrecognition limitation with respect to A's sale of the QSB stock is A's section 1045 amount realized reduced by A's section 1045 adjusted basis. Because PRS did not distribute all of a particular type of QSB stock and the distribution of the QSB stock to A was not in liquidation of A's interest in PRS, A's section 1045 amount realized is $125 (A's amount realized from the sale of the distributed QSB stock, $250, multiplied by A's smallest percentage interest (prior to the distribution) in PRS's income, gain, or loss with respect to such stock, 50%). A's section 1045 adjusted basis is the product of the partnership's basis in the QSB stock sold by the partner, $150, and A's smallest percentage interest (prior to the distribution) in the partnership's income, gain, or loss with respect to such stock, 50%. Therefore, A's section 1045 adjusted basis is $75 (50% of $150), and A's nonrecognition limitation amount on the sale of the QSB stock is $50 ($125 section 1045 amount realized minus $75 section 1045 adjusted basis). As this amount is less than the amount of gain that A is eligible to defer under section 1045, $100, A defers recognition of only $50 of the gain from the sale of the QSB stock. A must recognize the remaining $50 of that gain.

(iv) The partnership realizes gain of $100 ($250 amount realized minus $150 remaining basis in QSB stock) on the sale of its QSB stock. Because the partnership reinvested its entire amount realized in new QSB stock and because the partnership made a timely election to apply section 1045, the partnership may treat all of this gain as section 1045 gain. A's share of the partnership section 1045 gain is $50 (50% of $100). Because A is an eligible partner under paragraph (a)(2) of this section, A can defer recognition of this gain subject to the nonrecognition limitation described in paragraph (a)(3) of this section. The smallest percentage interest that A held in PRS during the time that PRS held the QSB stock (determined without regard to the reduction that occurred as a result of PRS's distribution of QSB stock to A) is 50%. See paragraph (a)(3)(ii) of this section. Therefore, under the nonrecognition limitation, A can defer recognition of all $50 (50% of $100) of the gain allocated to A.

Example 13. Contribution of replacement QSB stock to a partnership. (i) On January 1, 2006, A, an individual, B, an individual, and X, a corporation, form PRS, a partnership. A, B, and X each contribute $25 to PRS and agree to share all partnership items equally. On February 1, 2006, PRS purchases Stock 1, which is QSB stock in the hands of the partnership. PRS sells Stock 1 on November 4, 2006, for $150. PRS realizes $75 of gain from the sale of Stock 1 (none of which is treated as ordinary income) and allocates $25 of gain to each of its partners. PRS informs the partners that it does not intend to make an election under section 1045 with respect to the sale of Stock 1. Each partner's share of the amount realized from the sale of Stock 1 is $50. On November 30, 2006, A, an eligible partner within the meaning of paragraph (a)(2) of this section, purchases Stock 2, which is also QSB stock, for $50 and makes a valid section 1045 election under paragraph (c)(1) of this section. Subsequently, A transfers Stock 2 to ABC, a partnership.

(ii) Because A purchased, within 60 days of PRS's sale of Stock 1, replacement QSB stock for a cost equal to A's share of the partnership's amount realized on the sale of Stock 1, and because A made a valid election to apply section 1045 with respect to A's share of the gain from PRS's sale of Stock 1, A does not recognize A's $25 distributive share of the gain from PRS's sale of Stock 1. Before the contribution of Stock 2 to ABC, A's adjusted basis in Stock 2 is $25 ($50 cost minus $25 nonrecognition amount). Upon the contribution of Stock 2 to ABC, A's basis in the ABC partnership interest is $25, and ABC's basis in Stock 2 is $25. However, Stock 2 does not qualify as QSB stock in ABC's hands because it was not acquired at original issue. Neither A nor ABC will be eligible for section 1045 treatment on a subsequent sale of Stock 2.

(h) *Effective date.* This section applies to sales of QSB stock on or after the date final regulations are published in the **Federal Register**.

Mark E. Matthews,

Deputy Commissioner for Services and Enforcement.

[FR Doc. 04–15964 Filed 7–14–04; 8:45 am]

BILLING CODE 4830–01–P

DEPARTMENT OF LABOR

Occupational Safety and Health Administration

29 CFR Part 1926

RIN 1218–AC14

[Docket No. S–775 A]

Steel Erection; Slip Resistance of Skeletal Structural Steel

AGENCY: Occupational Safety and Health Administration (OSHA), Labor.

ACTION: Notice of proposed rulemaking; limited reopening of rulemaking record.

SUMMARY: OSHA is reopening the rulemaking record of Docket S–775, Steel Erection, to obtain comments and information on a provision that addresses the slip resistance of walking surfaces of coated structural steel members, 29 CFR 1926.754(c)(3), and Appendix B to that standard. This provision is scheduled to take effect on July 18, 2006. OSHA is considering whether to retain, amend, or revoke this provision, based on whether suitable and appropriate test methods for testing structural steel coatings, and whether slip-resistant coatings meeting the slip resistance criteria in the standard, can reasonably be expected to be available by the effective date. OSHA invites the public to submit additional comments and information relating to the appropriateness of § 1926.754(c)(3).

DATES: Submit written hearing requests and comments regarding this notice, by the following dates:

Hard Copy: Your hearing requests and comments must be submitted [postmarked or sent] by October 13, 2004.

Facsimile and electronic transmission: Your hearing requests and comments must be sent by October 13, 2004.

Please see the section entitled ''Supplementary Information'' for additional information on submitting written comments and hearing requests.

ADDRESSES: You may submit comments and hearing requests, *identified by Docket number (S–775 A) and RIN number (1218–AC14),* by any of the following methods:

Regular mail, express delivery, hand-delivery, and messenger service: Submit three copies of comments, attachments, and hearing requests to the OSHA Docket Office, Docket No. S–775 A, Room N–2625, U.S. Department of Labor, 200 Constitution Avenue, NW., Washington, DC 20210; telephone (202) 693–2350. OSHA Docket Office and Department of Labor hours of operation are 8:15 a.m. to 4:45 p.m., e.s.t.

Please note that there may be delays in receiving comments and other materials by regular mail. Telephone the OSHA Docket Office at (202) 693–2350 for information regarding security procedures concerning delivery of materials by express delivery, hand delivery, and messenger service.

Facsimile: Transmit hearing requests and comments (including attachments) consisting of 10 or fewer pages by facsimile to the OSHA Docket Office at (202) 693–1648.

Agency Web site: Submit comments and hearing requests electronically through OSHA's Web site at *http://ecomments.osha.gov.*

Federal eRulemaking Portal: Submit comments and hearing requests electronically at *http://www.regulations.gov.* Follow the instructions for submitting comments.

For detailed instructions on submitting comments and hearing requests, and for additional information on the rulemaking process, see the ''Public Participation'' heading of the **SUPPLEMENTARY INFORMATION** section of this document.

All submissions will be available for inspection and copying in the OSHA Docket Office at the address above. Most comments and submissions will be posted on OSHA's Web page (*http://www.osha.gov*). Contact the OSHA Docket Office for information about materials not available on OSHA's Web page and for assistance in using the Web page to locate docket submissions. Because comments sent to the docket are available for public inspection, the Agency cautions interested parties against including personal information such as Social Security numbers and birthdates with their submissions.

FOR FURTHER INFORMATION CONTACT: For general information and press inquiries, contact OSHA's Office of Information and Consumer Affairs, Room N–3647, OSHA, U.S. Department of Labor, 200 Constitution Avenue, NW., Washington, DC 20210; telephone (202) 693–1999. For technical inquiries, contact Tressi Cordaro, Office of Construction Standards and Guidance, Directorate of Construction, Room N–3468, OSHA, U.S. Department of Labor, 200

Constitution Avenue, NW., Washington, DC 20210; telephone (202) 693–2020.

For additional copies of this notice, contact OSHA's Office of Publications, U.S. Department of Labor, Room N–3101, 200 Constitution Avenue, NW., Washington, DC 20210; telephone (202) 693–1888. Electronic copies of this notice, as well as news releases and other relevant documents, are available on OSHA's Web page at *http://www.osha.gov.*

SUPPLEMENTARY INFORMATION:

I. Background

On January 18, 2001, (volume 66 of the **Federal Register**, page 5196), OSHA published a new construction standard for steel erection work, 29 CFR subpart R (Sections 1926.750 through 1926.761 and Appendices A through H). The new standard was developed through negotiated rulemaking, together with notice and comment under section 6(b) of the Occupational Safety and Health Act (OSH Act) and section 107 of the Construction Safety Act. In the course of that rulemaking, OSHA received evidence that workers were slipping and falling when working on painted or coated structural steel surfaces. The Agency decided that requiring the use of slip-resistant coatings on these surfaces would help to address the slipping and falling hazard. During the rulemaking, OSHA received evidence both in support of and in opposition to the technical feasibility of such a requirement.

The relevant provisions of the final rule are 29 CFR 1926.754(c)(3) and Appendix B of subpart R of part 1926. Paragraph (c)(3) of Section 1926.754 establishes a slip-resistance requirement for the painted and coated top surface of any structural steel member installed after July 18, 2006, on which employees are to walk. That paragraph reads as follows:

> Slip resistance of skeletal structural steel. Workers shall not be permitted to walk the top surface of any structural steel member installed after July 18, 2006 that has been coated with paint or similar material unless documentation or certification that the coating has achieved a minimum average slip resistance of .50 when measured with an English XL tribometer or equivalent tester on a wetted surface at a testing laboratory is provided. Such documentation or certification shall be based on the appropriate ASTM standard test method conducted by a laboratory capable of performing the test. The results shall be available at the site and to the steel erector. (Appendix B to this subpart references appropriate ASTM standard test methods that may be used to comply with this paragraph (c)(3)).

Appendix B to Subpart R is entitled ''Acceptable Test Methods for Testing Slip-Resistance of Walking/Working Surfaces (§ 1926.754(c)(3)). Non-Mandatory Guidelines for Complying with § 1926.754(c)(3).'' The Appendix lists two acceptable test methods: Standard Test Method for Using a Portable Inclineable Articulated Strut Slip Tester (PIAST) (ASTM F1677–96); and Standard Test Method for Using a Variable Incidence Tribometer (VIT) (ASTM F1679–96).

The crux of the slip resistance requirement in § 1926.754(c)(3) is that the coating used on the structural steel walking surface must have achieved a minimum average slip resistance of 0.50 when measured by an English XL tribometer or equivalent tester on a wetted surface using an appropriate ASTM standard test method. In the preamble to the final rule, OSHA noted that the two ASTM standard test methods listed in Appendix B (ASTM F1677–96 and ASTM F1679–96) had not yet been validated through statements of precision and bias. In addition, representatives of the coatings industry indicated that it would take time to develop new coatings to meet the requirement. For these reasons, the Agency included the slip resistance requirement and delayed its effective date until July 18, 2006, because the evidence in the record indicated that it was reasonable to expect these technical developments to be completed by that date.

The slip-resistance requirements of the final steel erection standard were challenged in the U.S. Court of Appeals for the D.C. Circuit by the Steel Coalition and the Resilient Floor Covering Institute. On April 3, 2003, OSHA entered into a settlement agreement with petitioners. In that agreement, OSHA agreed to provide the petitioners and other interested parties with a further opportunity to present evidence on the progress that has been made on slip resistant coatings and test methods. OSHA agreed to then evaluate the evidence in the expanded record on these topics and issue a final rule, not later than January 18, 2006, reaffirming, amending, or revoking the requirements in § 1926.754(c)(3). This notice is the first step in that process.

II. Reopening the Rulemaking Record

By this notice OSHA is reopening the rulemaking record for Docket S–775, Steel Erection, beginning July 18, 2004, to invite the public to submit additional comments and information relating to the appropriateness of § 1926.754(c)(3), and to request an informal public hearing.

As discussed earlier, OSHA determined, based on the evidence in the record at the time it issued the final rule in 2001, that slip-resistant coatings could be developed, and the testing methods for such coatings could be validated, within five years. The Agency recognizes that if this determination were to be in error, it would need to revise the slip-resistance provision in some respects, or possibly even to revoke it. While we can broadly indicate the range of options that could be considered, such as further extension of the effective date, recognition of other or additional test methods, or revocation of the requirement, for example, we cannot be more specific at this time in the absence of up-to-date information on what is currently being done to develop coating materials and to validate testing methods for those materials. Accordingly, in this notice, we are asking for information on the following:

(1) Whether the test methods identified in § 1926.754(c)(3) and Appendix B to Subpart R—or any other test methods that are available, or reasonably can be expected to be available by July 18, 2006—are suitable and appropriate to evaluate the slip resistance of wetted coated skeletal structural steel surfaces on which workers may be expected to walk in connection with steel erection activities; and

(2) Whether skeletal structural steel coatings that comply with the slip resistance criterion of the Standard when tested under the identified method(s) are commercially available—or reasonably can be expected to be commercially available—by July 18, 2006, and whether the use of such coatings will be economically feasible.

III. Public Participation

The Agency requests members of the public to submit written comments and other information on the issues raised in this proposal. These comments may include objections and a request for an informal public hearing. See the sections above titled **DATES** and **ADDRESSES** for information on submitting these comments and hearing requests. Submissions received within the specified comment period will become part of the record, and will be available for public inspection and copying in the OSHA Docket Office.

Under section 6(b)(3) of the OSH Act and 29 CFR part 1911.11, members of the public may request an informal hearing by submitting such requests in accordance with the requirements set forth under the **DATES** and **ADDRESSES** sections of this notice. Because the scope of this proposal is so limited, we

are not requiring hearing requesters to file formal ''objections'' to the proposal. If you are requesting a hearing, you must:

- Include your name and address;
- Ensure that the request is sent or postmarked no later than October 13, 2004; and
- Provide a detailed summary of the evidence that you would intend to offer at the hearing.

IV. Regulatory Analyses

The regulatory impact analysis for the final rule on steel erection contained detailed information on the entire final rule, including costs and benefits attributable to the slip-resistance provisions of § 1926.754(c)(3). As discussed earlier, those provisions are based on the Agency's determination, based on the record at the time, that slip-resistant coatings and testing methods would be developed and validated in time to meet the July 18, 2006 compliance date. The present notice does not propose to make specific changes to those provisions, but rather, is intended to solicit information that will either support the earlier determinations or indicate that they need to be revised. Accordingly, the findings of the 2001 regulatory analysis do not need to be revised at this time. OSHA believes that the reopening of the record on this limited issue is not a significant regulatory action for the purposes of EO 12866. OSHA also certifies that this reopening of the record will not have a significant impact on a substantial number of small entities, for the purposes of the Regulatory Flexibility Act (5 U.S.C. 601 *et seq.*).

For the reasons stated above, OSHA has also determined that this proposal presents no issues involving Unfunded Mandates (UMRA) (2 U.S.C. 1501 *et seq.*) or Federalism (EO 13132).

V. Authority

This document was prepared under the Direction of John L. Henshaw, Assistant Secretary of Labor for Occupational Safety and Health, U.S. Department of Labor, 200 Constitution Avenue, NW., Washington, DC 20210. It is issued under sections 4, 6, and 8 of the Occupational Safety and Health Act of 1970 (29 U.S.C. 653, 655, 657), section 107 of the Contract Work Hours and Safety Standards Act (Construction Safety Act) (40 U.S.C. 333), Secretary of Labor's Order 5–2002 (67 FR 65008), and 29 CFR part 1911.

Signed at Washington, DC, this 12th day of July, 2004.

John L. Henshaw,

Assistant Secretary of Labor.

[FR Doc. 04–16084 Filed 7–14–04; 8:45 am]

BILLING CODE 4510–26–P

DEPARTMENT OF AGRICULTURE

Forest Service

36 CFR Parts 212, 251, 261, and 295

RIN 0596–AC11

Travel Management; Designated Routes and Areas for Motor Vehicle Use

AGENCY: USDA, Forest Service.

ACTION: Proposed rule; request for comment.

SUMMARY: The Forest Service proposes to amend regulations regarding travel management on National Forest System lands to clarify policy related to motor vehicle use, including the use of off-highway vehicles. The proposed rule would require the establishment of a system of roads, trails, and areas designated for motor vehicle use. The proposed rule also would prohibit the use of motor vehicles off the designated system, as well as motor vehicle use on the system that is not consistent with the classes of motor vehicles and, if applicable, the time of year, designated for use. The establishment and clear identification of a transportation and use system for motor vehicles on each National Forest would enhance management of National Forest System lands; sustain natural resource values through more effective management of motor vehicle use; enhance opportunities for motorized recreation experiences on National Forest System lands; address needs for access to National Forest System lands; and preserve areas of opportunity on each National Forest for nonmotorized travel and experiences. The proposed rule also would conform agency rules to the provisions of Executive orders 11644 and 11989 regarding off-road use of motor vehicles on Federal lands.

DATES: Comments must be received in writing by September 13, 2004.

ADDRESSES: Send written comments to Proposed Rule for Designated Routes and Areas for Motor Vehicle Use, c/o Content Analysis Team, P.O. Box 221150, Salt Lake City, UT 84122–1150; by e-mail to *trvman@fs.fed.us*; or by facsimile to (801) 517–1014. Comments also may be submitted by following the instructions at the Federal eRulemaking portal at *http://www.regulations.gov.*

All comments, including names and addresses when provided, will be placed in the rulemaking record and will be available for public inspection and copying. The public may inspect comments received on this proposed rule in the office of the Content Analysis Team, 550 West Amelia Earhart Drive, Building 1, Suite 100, Salt Lake City, UT 84116, on business days between the hours of 8:30 a.m. and 4:30 p.m. Those wishing to inspect comments are encouraged to call ahead at (801) 517–1020 to facilitate entry into the building.

FOR FURTHER INFORMATION CONTACT: Sharon Metzler, Recreation and Heritage Staff, (202) 205–0931, or Glenn Casamassa, Legislative Affairs Staff, (202) 205–1216.

SUPPLEMENTARY INFORMATION:

Background and Need for the Rule

Providing for the long-term sustainable use of National Forest System lands and resources is essential to maintaining the quality of the recreation experience in the National Forests. Motor vehicle use is an appropriate way to recreate in the National Forests, access hunting and fishing opportunities, sightsee, and otherwise enjoy recreational experiences on National Forest System lands. The growing use of motor vehicles, however, is prompting the Forest Service to revise its management of this use so that the agency can continue to provide opportunities desired by the public, while sustaining National Forest System lands and resources.

Off-road motor vehicle use for public enjoyment of the National Forest System has increased in recent years. Motor vehicle use off roads in the National Forest System may involve any motor vehicle that can travel off road, such as a sport utility vehicle and an off-highway vehicle (OHV). An OHV is a motor vehicle that is designed or retrofitted primarily for recreational use off road, including minibikes, amphibious vehicles, snowmobiles, off-highway motorcycles, go-carts, motorized trail bikes, and dune buggies. In the 1960s and 1970s, the opportunities that people enjoyed to hike, camp, and sightsee on the National Forests expanded to include the opportunities to operate motor vehicles across National Forest System lands, which provided access to areas previously accessible only on foot or by horse. As off-road motor vehicle use increased, questions arose about the current and potential impacts arising

from operation of motor vehicles on soil, water, vegetation, fish and wildlife, National Forest visitors, and cultural and historic resources.

Executive Order (E.O.) 11644 (February 8, 1972), ''Use of Off-Road Vehicles on the Public Lands,'' as amended by E.O. 11989 (May 24, 1977), addresses these concerns. Section 3(a) of E.O. 11644 directs the Forest Service to promulgate regulations that provide for designation of trails and areas for off-road motor vehicle use. Pursuant to section 3(a) of E.O. 11644, the regulations must require that designation of these trails and areas be based upon protection of National Forest System resources, promotion of public safety, and minimization of conflicts among uses of National Forest System lands. Specifically, section 3(a) of E.O. 11644 directs the agency to develop and issue regulations ''to provide for administrative designation of the specific areas and trails on public lands on which the use of off-road vehicles may be permitted, and areas in which the use of off-road vehicles may not be permitted. * * *'' Section 9(b) was added to E.O. 11644 when it was amended by E.O. 11989. Section 9(b) specifically authorizes the Forest Service to adopt the policy to designate those areas or trails that are suitable for motor vehicle use and to close all other areas and trails to that use.

Forest Service rules at Title 36, Code of Federal Regulations, part 295 (36 CFR part 295) codify the requirements in E.O. 11644 and E.O. 11989 by providing for administrative designation of areas and trails on National Forest System lands where motor vehicle use is allowed, restricted, or prohibited. National Forest managers develop travel plans that are consistent with the regulations and the intent of E.O. 11644 and E.O. 11989, while meeting public demand for recreation and resource protection needs. In crafting their travel plans, many National Forest managers keep the Forests open to motor vehicle use unless there is a pressing reason to close them. These managers attempt to maximize the opportunities for recreational choice, while minimizing resource damage in the most sensitive areas of National Forest System lands. National Forests where this approach has been adopted are referred to as ''open unless posted closed.'' This approach has worked when the amount of off-road motor vehicle use is minimal and occasional cross-country vehicle tracks are of less concern than other impacts to National Forest System lands and resources.

However, between 1982 and 2000, the number of people who drive motor vehicles off road increased over 109 percent in the United States (''Outdoor Recreation for 21st Century America: A Report to the Nation, The National Survey on Recreation and the Environment,'' p. 37 (H. Cordell, 2004)). In many National Forests, the magnitude and intensity of motor vehicle capability and use increased to the point where the intent of E.O. 11644 and E.O. 11989 could not be met while still allowing the full array of opportunities for motor vehicle use. In these National Forests, the scenario of an occasional cross-country vehicle track has evolved into situations where areas rutted by motor vehicle use have become more common. Soil depth, water quality, and wildlife habitat are being impacted, and motor vehicle use is beginning to affect the condition of these National Forests.

Studies conducted by the Forest Service have raised these same issues. For example, the ''Draft Environmental Impact Statement for Cross-Country Travel for OHVs, Kaibab, Coconino, Prescott, Tonto, and Apache-Sitgreaves National Forests'' (66 FR 17136, March 29, 2001) identified environmental impacts associated with cross-country wheeled motor vehicle use, including the spread of noxious weeds along roads and trails; erosion at rates that permanently affect the productivity of National Forest System lands; damage to cultural or historical sites; conflicts among uses of National Forest System lands; and disturbance of wildlife and wildlife habitat.

In addition, the Forest Service and the Grand Canyon Trust each inventoried roads and trails in one area of the Coconino National Forest. The inventories revealed that National Forest users had created a large number of roads and trails over a 10-year period. The two inventories also showed a significant population of noxious weeds associated with all roads.

Members of the public, the Arizona Game and Fish Department, and the Arizona Parks and Recreation Department have also shared their concerns with managers from these five National Forests about sound and site degradation associated with certain OHV use on National Forest System lands. Public surveys of Arizona residents conducted by Arizona State Parks for the preparation of long-range comprehensive plans for the Arizona State Trails Program and the Arizona State Off-Highway Vehicle Recreation Program showed that 82 percent of motorized trail users and 81 percent of non-motorized trail users in Arizona expressed concerns about conflicts with other uses (''The Arizona Trails 2000: State Motorized and Nonmotorized Trails Plan,'' Nov. 1999).

In January 2001, the Forest Service and the Bureau of Land Management completed an environmental impact statement regarding motor vehicle use on Federal lands the agencies administer in Montana, North Dakota, and portions of South Dakota. The Forest Service selected alternative five in this environmental impact statement, which prohibits cross-country wheeled motor vehicle use throughout the analysis area. In a summary of the environmental effects of the selected alternative from the Forest Service's record of decision, the agency identified benefits associated with restricting cross-country wheeled motor vehicle use. These benefits included substantial reduction of use conflicts associated with cross-country travel; improvement of motorized and non-motorized recreation experiences; substantial reduction in impairment of visual aesthetics; and enhanced protection of habitat and aquatic, soil, and air resources in the analysis area (''Off-Highway Vehicle Environmental Impact Statement and Proposed Plan Amendment for Montana, North Dakota and Portions of South Dakota''; the notice of the draft environmental impact statement was published in 64 FR 57120, October 22, 1999, and the final environmental impact statement was issued January 4, 2001).

Cross-country wheeled motor vehicle use was also reviewed in an environmental analysis conducted by the National Forests in Florida on the Osceola National Forest in 2004 to identify which roads and trails would be designated for use by motor vehicles and bicycles in certain restricted areas. Benefits of designated roads and trails included less interruption of natural processes, such as fire; improvement of the ecological and hydrological functions in and around riparian areas, wetlands, and streams; and increased public safety (''Environmental Assessment for Access Designation in Restricted Areas, Osceola National Forest, Baker and Columbia Counties, Florida,'' 2004).

Some travel plans, such as the travel plans for the Hoosier, White Mountain, and Monongahela National Forests, were changed to enhance management of motor vehicle use within the boundaries of these National Forests. Some National Forests have a system of motor vehicle use on established or designated routes and areas, while others do not. As a result, the Forest Service does not have a clear, consistent, internal policy regarding

motor vehicle use on National Forest System lands.

Since E.O. 11644 and E.O. 11989 were issued, impressive advances in motor vehicle technology have been made. The capability of motor vehicles to travel off flat, firm roads has significantly increased. Whole new classes of vehicles that can travel off road, such as all-terrain vehicles (ATVs) and sport utility vehicles (SUVs), are widely used and growing in popularity. For example, from 1997 to 2001, the number of ATVs in use increased by almost 40 percent, the number of ATV drivers grew by almost 36 percent, and the number of ATV driving hours increased by 50 percent (statement made by Dr. Edward J. Heiden of Heiden Associates, at a Consumer Product Safety Commission Public Field Hearing, June 5, 2003).

The line between street vehicle and OHV has blurred. Vehicles created for specialized uses off road, such as military vehicles, are now marketed and purchased as family cars. An increasing number of States have statutes governing OHV use, including vehicle registration requirements, limits on operator age, training and licensing requirements, equipment requirements, sound restrictions, and safety requirements.

While motor vehicle recreation is increasing on National Forests, so are many other recreational activities. From 1982 to 2000, the number of people in the United States participating in fishing increased 24 percent, and the number of people participating in hunting increased 21 percent (''Outdoor Recreation for 21st Century America: A Report to the Nation, The National Survey on Recreation and the Environment,'' p. 41 (H. Cordell, 2004)). Many recreationists have found that motor vehicle use enhances their enjoyment of these other activities. For example, motor vehicles help hunters and anglers access remote areas and lakes in National Forests, and enable the public after a short ride to enjoy rare vistas that formerly could be reached only after a long hike or horseback ride. In many National Forests, most off-road motor vehicle use is conducted in support of other recreational activities, rather than as the central part of a recreational experience. A recent survey conducted in Idaho showed that more than half (53.1 percent) of resident hunters surveyed owned an ATV or off-highway motorcycle (OHM), and that 47.5 percent of hunters surveyed used an ATV or OHM for hunting; the percentage of hunters never using an ATV decreased from 83 percent in 1988 to 35 percent in 2000 (''Understanding ATV/OHM and Hunting Interactions in Idaho: A Survey of ATV/OHM Registrants and Licensed Hunters'' (2002), as discussed in ''Idaho 2003–2007 Statewide Comprehensive Outdoor Recreation and Tourism Plan, Idaho Department of Recreation,'' p. 156 (2003)). OHV use is a growing and important recreational activity on National Forest System lands.

Recreational use not associated with motor vehicle travel has increased as well in the United States. The number of people viewing or photographing birds has increased over 231 percent, the number of people day hiking has increased 193 percent, and the number of people backpacking has increased 182 percent since the early 1980s (''Outdoor Recreation for 21st Century America: A Report to the Nation, The National Survey on Recreation and the Environment,'' p. 37 (H. Cordell, 2004)). The challenge for recreation management is to address the needs and conflicting expectations of millions of people who use and enjoy the National Forests, while providing for the long-term sustainability of National Forest System lands. Increased pressure from growing numbers of people, coupled with advances in recreation technology, will continue to challenge Federal land management agencies, State and local governments, and private landowners. As demand for a greater variety of recreation uses increases, managing an appropriate balance between motor vehicle use and nonmotorized recreational activities has become an important priority.

Americans cherish the National Forests and National Grasslands for the values they provide: opportunities for healthy recreation and exercise, natural scenic beauty, important natural resources, protection of rare species, wilderness, a connection with their history, and opportunities for unparalleled outdoor adventure. Recreation visitors have high expectations for National Forest System lands in terms of access, settings, experiences, facilities, and services, and they are likely to expect even more in the future. Recreation is one of the fastest growing uses on the National Forests and National Grasslands. Accordingly, the agency needs to strike an appropriate balance in managing all types of recreational activities. As part of this effort, the Forest Service is proposing revisions to 36 CFR parts 212, 251, 261, and 295 to provide for a system of National Forest System roads, National Forest System trails, and areas on National Forest System lands designated for motor vehicle use. A designated system established with public involvement would enhance public enjoyment of the National Forests, while maintaining other important values and uses on National Forest System lands.

The designated system would be broader in scope than E.O. 11644 and E.O. 11989 and 36 CFR part 295 because the system would apply to motor vehicle use on National Forest System roads, as well as off National Forest System roads. The designated system also would apply to all classes of motor vehicles, including OHVs, unless exempted. This approach would allow the agency to address different types of uses on National Forest System roads. In addition, this approach would allow the agency to include in the designations for National Forest System trails and areas on National Forest System lands any classes of motor vehicles that can travel off road.

Section-by-Section Analysis of Proposed Rule Changes

Revisions to Part 212—Travel Management

The provisions governing designation of roads, trails, and areas would be included in part 212 as a component of travel management. The current heading of part 212, ''Administration of the Forest Transportation System,'' would be changed to ''Travel Management.'' Part 212 would be divided: subpart A would contain the provisions currently in part 212 governing administration of the forest transportation system; subpart B would contain new provisions governing designation of National Forest System roads, National Forest System trails, and areas on National Forest System lands for motor vehicle use and also incorporating provisions previously found at part 295; and subpart C would contain the provisions governing snowmobile use on National Forest System roads and National Forest System trails and in areas on National Forest System lands. The proposed rule would remove the current part 295, as its provisions, with the exception of § 295.6, requiring annual review of motor vehicle management plans and temporary designations, would be integrated into part 212, subpart B, of the proposed rule.

This approach would allow the agency to create a more comprehensive system of travel management without compromising the provisions of the regulations governing the forest transportation system, which address facilities, but not areas, and which are more concerned with construction, maintenance, and management of the forest transportation system than management of uses on National Forest

System roads, National Forest System trails, and areas on National Forest System lands. The agency is also proposing minor, nonsubstantive revisions to part 212.

Part 212, New Subpart A—Administration of the Forest Transportation System

Table of contents for part 212. The table of contents for part 212 would be revised to set out the sections in the new subparts A, B, and C. A technical revision also would be made to change the heading of § 212.2 from ''Forest development transportation program'' to ''Forest transportation program.''

Section 212.1 Definitions. This section contains definitions applicable to subparts A, B, and C. Some of the provisions from § 212.2(a) would be incorporated into a new definition for forest transportation atlas. ''Forest transportation atlas'' would be defined as a display of the system of roads, trails, and airfields of an administrative unit of the National Forest System that consists of the geospatial, tabular, and other data that support resource management activities and analysis associated with resource management goals in the applicable land management plan.

To accommodate the new system of designated routes and areas, the proposed rule would add definitions for the following terms: administrative unit; area; designated road, trail, or area; forest road or trail; forest transportation system; motor vehicle; National Forest System road; National Forest System trail; road or trail under Forest Service jurisdiction, snowmobile; temporary road or trail; trail; travel management atlas; unauthorized or unclassified road or trail; and use map.

Definitions for trail and categories of trails are needed to integrate designation of roads, trails, and areas for motor vehicle use into travel management in part 212. The definition for a trail in the proposed rule would complement the definition for a road in the current part 212. Since a road is defined as a motor vehicle route over 50 inches wide, unless identified and managed as a trail, a trail would be defined as a route 50 inches or less in width, or a route over 50 inches wide that is identified and managed as a trail.

The same categories of roads are also used for trails, and they are combined in the same definition, *i.e.,* forest road or trail, temporary road or trail, and unauthorized or unclassified road or trail. A forest road or trail would be defined as a road or trail that is wholly or partly within or adjacent to and serving the National Forest System that the Forest Service determines is necessary for the protection, administration, and utilization of the National Forest System and the use and development of its resources, and that is reflected in a forest transportation atlas. A temporary road or trail would be defined as a road or trail necessary for emergency operations or authorized by contract, permit, lease, or other written authorization that is not a forest road or trail and that is not included in a forest transportation atlas. An unauthorized or unclassified road or trail would be defined as a road or trail that is not a forest road or trail or a temporary road or trail and that is not included in a forest transportation atlas.

The definitions for classified road, temporary road, and unclassified road in the current part 212 would be replaced with definitions for forest road, temporary road, and unauthorized or unclassified road in the proposed rule. The definition for forest road in the proposed rule parallels the definition for classified road in the current rule and comes from 23 U.S.C. 101. The definition for temporary road in the proposed rule parallels the definition for temporary road in the current rule. The term ''unauthorized or unclassified road'' more clearly captures the relationship among the three categories of roads than the term ''unclassified road.'' Likewise, the definition for unauthorized or unclassified road (any road other than a forest road or a temporary road) more clearly shows how the three categories of roads relate to each other than the definition for unclassified road.

Designated roads and trails are National Forest System roads and trails. National Forest System roads and trails that are not designated for motor vehicle use under this proposed rule could still be designated for other purposes, such as hiking, mountain biking, or equestrian use. Designated uses would be reflected on a use map.

Unplanned or user-created roads and trails on National Forest System lands that have resulted from cross-country motor vehicle use would be identified through public involvement and would be considered in the designation process under the proposed rule. These routes would not necessarily be inventoried and included in a forest transportation atlas. If unplanned or user-created routes are not inventoried and included in a forest transportation atlas, they would meet the definition for unauthorized or unclassified road or trail (a road or trail other than a forest road or trail or a temporary road or trail) under the proposed rule. Alternatively, these routes could be designated for motor vehicle use pursuant to § 212.51 of the proposed rule or for other purposes. If so, these routes would become National Forest System roads or National Forest System trails and would be included in a forest transportation atlas and reflected on a use map.

''Administrative unit'' would be defined as a National Forest, a National Grassland, Land Between the Lakes, Lake Tahoe Basin Management Unit, or Midewin National Tallgrass Prairie.

''Area'' would be defined as a discrete, specifically delineated space that is smaller than a ranger district. All references to area in the proposed regulations would be modified by adding ''on National Forest System lands.'' Thus, only areas on National Forest System lands would be designated under the proposed rule.

Areas designated for motor vehicle use are not intended to be large or numerous. The characteristics of an area, such as its size and topography, are not enumerated in the definition in the proposed rule to give the agency the flexibility to designate areas for motor vehicle use as appropriate, given the variety of natural features, resources, and uses on National Forest System lands. Generally, an area designated for motor vehicle use would have natural resource characteristics (like sand dunes) that are suitable for motor vehicle use, or would be so significantly altered by past actions (like old quarry sites) that motor vehicle use might be appropriate. Once an area is designated, it would be specifically delineated on a use map. In addition, the characteristics of an area are not specified in the definition to give the agency flexibility with respect to allowing, restricting, or prohibiting snowmobile use.

''Designated road, trail, or area'' would be defined as a National Forest System road, National Forest System trail, or an area on National Forest System lands that is designated for motor vehicle use pursuant to § 212.51 in a use map contained in a travel management atlas. Only National Forest System roads, National Forest System trails, and areas on National Forest System lands would be designated for motor vehicle use under the proposed rule.

''Forest transportation system'' would be defined as the system of National Forest System roads, National Forest System trails, and airfields on National Forest System lands that are included in a forest transportation atlas.

''National Forest System road,'' ''National Forest System trail,'' and ''Area'' are defined in the proposed rule. Pursuant to 23 U.S.C. 101, National Forest System road and National Forest

System trail would be defined as a forest road or trail under the jurisdiction of the Forest Service. Thus, any road or trail that is not a forest road or trail under the jurisdiction of the Forest Service would not be designated for motor vehicle use under the proposed rule.

''Road or trail under Forest Service jurisdiction'' is defined in the proposed rule. The definition for road or trail under Forest Service jurisdiction is consistent with the terminology in 23 U.S.C. 101. For purposes only of the definition of National Forest System road and National Forest System trail, a road or trail under the jurisdiction of the Forest Service would be defined in terms of control over the road or trail. Thus, a road or trail that is authorized by a legally documented right-of-way held by a State, County, or local public road authority would not be designated for motor vehicle use under the proposed rule because that road or trail is not under the jurisdiction of the Forest Service. State law would govern motor vehicle use on that type of right-of-way. Likewise, a road or trail which an authorized officer has ascertained, for administrative purposes and based on available evidence, is within a public right-of-way for a highway, such as a right-of-way for a highway pursuant to R.S. 2477, would not be designated for motor vehicle use under the proposed rule.

The definition for motor vehicle in the proposed rule builds on the definition for that term currently in 36 CFR 261.2 by excluding any wheelchair or mobility device, including one that is battery-powered, that is designed solely for use by a mobility-impaired person for locomotion, and that is suitable for use in an indoor pedestrian area. This exclusion of any wheelchair or mobility device would prevent violations of civil rights laws that could occur if restrictions on motor vehicle use were to be applied to motorized wheelchairs or other mobility devices. The definition for wheelchair or mobility device comes from Title V, section 507c, of the Americans With Disabilities Act (42 U.S.C. 12207(c)(2)).

The proposed rule would add a definition for snowmobile because, as explained in the description of proposed § 212.51 and 212.81, snowmobiles would be exempted from the mandatory designations in 36 CFR 212.51 and would be addressed separately in 36 CFR 212.81. The proposed rule defines a snowmobile as a motor vehicle that is designed exclusively for use over snow and that runs on a track or tracks and/or a ski or skis. This definition would not include motor vehicles such as SUVs, ATVs, or other wheeled vehicles that can be outfitted with tracks that turn them into vehicles that can travel over snow because these vehicles are not designed exclusively for use over snow.

The proposed rule would add a definition for a use map. A use map would reflect designated roads, trails, and areas on an administrative unit or a ranger district of the National Forest System and would be part of a travel management atlas. A travel management atlas would be defined as an atlas that includes a forest transportation atlas and a use map.

Section 212.2 Forest transportation program. The proposed rule would revise § 212.2 by reorganizing the current paragraph (a) into two paragraphs: (a) setting requirements regarding the travel management atlas, which would be developed and maintained for each administrative unit of the National Forest System and made available to the public at the headquarters of that administrative unit; and (b) describing a forest transportation atlas. The current paragraph (b) setting out requirements for the program of work for the forest transportation system would be redesignated as paragraph (c).

Section 212.5 Road system management. The proposed rule would revise § 212.5(a)(1) concerning the applicability of State traffic laws to traffic on roads by adding ''designations established under subpart B of this part or'' before ''the rules at 36 CFR part 261'' to make clear that designations of roads for motor vehicle use established under State law would not be incorporated pursuant to § 212.5(a)(1) to the extent they conflict with designations established under § 212.51. These revisions would prevent incorporation of State laws that designate roads, trails, or areas for motor vehicle use that conflict with designations established under § 212.51 of the proposed rule.

The proposed rule also would make technical changes to § 212.5. In the second sentence of § 212.5(a)(2)(ii), ''tailers'' would be changed to ''trailers.'' The heading for § 212.5(c) would be changed from ''Cost recovery on forest service roads'' to ''Cost recovery on National Forest System roads.'' The heading for § 212.5(d) would be changed from ''Maintenance and reconstruction of forest service roads by users'' to ''Maintenance and reconstruction of National Forest System roads by users.''

Section 212.7 Access procurement by the United States. The proposed rule would make a technical change to § 212.7(a) by changing the heading for that provision from ''Existing or proposed forest development roads which are or will be part of a system of a State, county, or other local subdivision'' to ''Existing or proposed National Forest System roads which are or will be part of a system of a State, county, or other local subdivision.''

Section 212.10 Maximum economy National Forest System roads. The proposed rule would make a technical change to paragraph (d) of § 212.10. The proposed rule would add the phrase, ''consistent with applicable environmental laws and regulations,'' to refer to the standard for a road that is sufficient for harvesting and removal of National Forest timber and other products, in order to make § 212.10(d) consistent with its authorizing statute, 16 U.S.C. 535a(e).

Section 212.20 National Forest trail system operation. The proposed rule would remove and reserve the current § 212.20 concerning the National Forest trail system. Management of National Forest System trails would be addressed in the new subpart B of part 212.

Part 212, New Subpart B—Designation of Roads, Trails, and Areas for Motor Vehicle Use

Section 212.50 Purpose and scope. The new subpart B of part 212 would provide for a system of National Forest System roads, National Forest System trails, and areas on National Forest System lands that are designated for motor vehicle use. Once these roads, trails, and areas are designated, motor vehicle use, including the class of vehicle and time of year, that is not in accordance with these designations would be prohibited pursuant to 36 CFR 261.13 of the proposed rule. Thus, motor vehicle use off designated roads and trails and outside of designated areas, or cross-country travel, would be prohibited pursuant to 36 CFR 261.13 of the proposed rule.

Section 212.51 Designation of roads, trails, and areas. To address the problems associated with motor vehicle use on routes and off routes in a more comprehensive, systemic manner, this provision would require that motor vehicle use on National Forest System roads, National Forest System trails, and areas on National Forest System lands be designated by vehicle class and, if appropriate, by time of year by the responsible official on administrative units or ranger districts of the National Forest System, provided that the following vehicles and uses would be exempted from these designations:

(a) Aircraft;

(b) Watercraft;

(c) Snowmobiles;

(d) Limited administrative use by the Forest Service;

(e) Use of any fire, military, emergency, or law enforcement vehicle for emergency purposes;

(f) Authorized use of any combat or combat support vehicle for national defense purposes;

(g) Law enforcement response to violations of law, including pursuit; and

(h) Use and occupancy of National Forest System lands and resources pursuant to a written authorization issued under Federal law or regulations.

All but one of these exemptions, the exemption for snowmobiles, are found in E.O. 11644, E.O. 11989, and 36 CFR part 295. Snowmobiles would be exempted from the mandatory designation scheme because a snowmobile traveling over snow results in different and less severe impacts to natural resource values than wheeled motor vehicles traveling over the ground. Consequently, in contrast to wheeled motor vehicles, it may be appropriate for snowmobiles to travel off route.

Nevertheless, since there are impacts associated with snowmobile use, and since snowmobiles are included in the definition of off-road vehicle in E.O. 11644 and E.O. 11989, the agency is preserving the authority currently in part 295 to allow, restrict, or prohibit snowmobile use on a discretionary basis in § 212.80 of the proposed rule, as discussed in the description of that section.

The proposed rule would give responsible officials the flexibility to designate roads, trails, and areas for motor vehicle use in one step or several stages. Specifically, responsible officials could designate motor vehicle use only in certain areas and on existing routes in an administrative unit or ranger district, that is, on National Forest System roads and trails reflected in the applicable forest transportation atlas and on user-created routes identified by the public and the Forest Service in the designation process. This approach would expedite implementation of a prohibition on cross-country motor vehicle use, other than in designated areas. Revision to the initial designations could effectuate a longer-term vision for motor vehicle management. Alternatively, the proposed rule would give responsible officials the flexibility to implement a longer-term vision for motor vehicle management in one step, by evaluating whether user-created routes should become National Forest System roads or National Forest System trails, be included in a forest transportation atlas, and reflected on a use map.

Existing decisions that allow, restrict, or prohibit motor vehicle use on National Forest System roads, National Forest System trails, or areas on National Forest System lands could be revised and incorporated into the new designated system established under the proposed rule, or could be subsumed in designations made pursuant to the proposed rule. If an administrative unit or ranger district has completed designations of roads, trails, and areas, the responsible official would evaluate the designations and determine if the designations could be included in the new designated system for motor vehicle use established under the proposed rule.

Suitability determinations and guidelines in land management plans would be separate from but relevant to designations made pursuant to this proposed rule. Land management plans determine suitability of uses and establish resource protection guidelines, such as those governing wildlife migration corridors, soil erosion, noise, and air pollution. The plans themselves would not designate roads, trails, or areas pursuant to this proposed rule and consequently would not be enforceable under 36 CFR 261.13. Rather, such designations would occur only after a decision separate from the plan decision is made pursuant to this proposed rule. If a designation decision would not be consistent with a plan, the plan would have to be amended to make it conform to the designation decision. Designation decisions would culminate from a site-specific proposal and public involvement. Once designations were made pursuant to this proposed rule, they would be enforceable pursuant to 36 CFR 261.13.

Section 212.52 Public involvement in the designation process. Section 212.52(a) of the proposed rule would address public involvement in the designation process and (like section 3(b) of E.O. 11644 and § 295.3) would require that the public be allowed to participate in the process of designating roads, trails, and areas or revising designations pursuant to this subpart. Proposed § 212.52(a) also would require that advance notice be given to allow for public comment on proposed or revised designations.

Public involvement in the designation process would include public participation in identification of unplanned or user-created roads and trails on National Forest System lands that have resulted from cross-country motor vehicle use. As stated previously, these routes would not necessarily be inventoried and included in a forest transportation atlas. If unplanned or user-created routes are not inventoried and included in a forest transportation atlas, they would meet the definition for unauthorized or unclassified roads or trails (any roads or trails other than forest roads and trails or temporary roads and trails) under the proposed rule. Alternatively, these routes could be designated for motor vehicle use pursuant to § 212.51 of the proposed rule or for other purposes. If so, these routes would become National Forest System roads or National Forest System trails, would be included in a forest transportation atlas, and would be reflected on a use map.

Section 212.52(b) of the proposed rule would address the absence of public involvement in temporary, emergency closures. Section 212.52(b)(1) would address the absence of public involvement in temporary, emergency closures in general. Specifically, § 212.52(b)(1) would state that nothing in § 212.52 would alter or limit the authority to implement temporary, emergency closures pursuant to 36 CFR part 261, subpart B, without advance public notice in order to provide short-term resource protection or to protect public health and safety.

Section 9 of E.O. 11644, as amended by E.O. 11989, and the current § 295.5 (which would be removed by this proposed rule) provide for temporary, emergency closures based on a determination of considerable adverse effects. Section 212.52(b)(2) of the proposed rule would address temporary, emergency closures based on a determination of considerable adverse effects. This section would provide that if, based on monitoring pursuant to § 212.57, the Forest Supervisor or other responsible official determines that motor vehicle use on a National Forest System road or National Forest System trail or in an area on National Forest System lands is causing or will cause considerable adverse effects on public safety or soil, vegetation, wildlife, wildlife habitat, or cultural or historic resources associated with that road, trail, or area, the Forest Supervisor or other responsible official would immediately close that road, trail, or area to motor vehicle use until the official determines that such adverse effects have been mitigated or eliminated and that measures have been implemented to prevent future recurrence.

E.O. 11644, E.O. 11989, and current § 295.5 provide that temporary, emergency closures based on a determination of considerable adverse effects will remain in effect until the responsible official determines that the adverse effects have been eliminated, rather than mitigated or eliminated. The Forest Service believes that use in

§ 212.52 of the phrase ''mitigated or eliminated'' in this context is reasonable and consistent with use of the word ''eliminated'' because mitigation of adverse effects has the net effect of elimination of adverse effects and because elimination of adverse effects is not always possible or may be difficult to establish.

Temporary, emergency closures based on a determination of considerable adverse effects are intended to be short-term. Removing roads, trails, or areas subject to a temporary, emergency closure from the system of designated roads, trails, and areas would require public involvement pursuant to § 212.52(a).

Section 212.53 Coordination with Federal, State, County, and other local governmental entities and Tribal governments. The current § 295.2 (which would be removed by this proposed rule) provides for coordination with appropriate Federal, State, and local agencies in connection with designation of trails and areas for motor vehicle use. Section 212.53 of the proposed rule would incorporate this provision, by providing that the Forest Supervisor or other responsible official shall coordinate with appropriate Federal, State, County, and other local governmental entities and Tribal governments when designating roads, trails, and areas pursuant to the proposed rule. Section 212.53 would include in the designation process coordination with other governmental agencies, such as the Bureau of Land Management or State natural resource agencies, that administer lands in the vicinity of roads, trails, and areas contemplated for designation.

Section 215.54 Revision of designations. Section 212.54 of the proposed rule would provide that designations made pursuant to § 212.51 could be revised as needed to meet changing conditions. Section 212.54 would allow for updated designations to reflect changes in environmental conditions, recreation demand, and other factors. Revision of designations would reflect the outcome of monitoring effects of motor vehicle use and would promote protection of the environment. Revisions of designations would be made in accordance with the requirements set out in the proposed rule for public input (§ 212.52) and designation criteria (§ 212.55) and would be identified in a use map pursuant to § 212.56.

Section 212.55 Criteria for designation of roads, trails, and areas. This section of the proposed rule would enumerate the criteria to be used in designating roads, trails, and areas for motor vehicle use.

Section 212.55(a) General criteria for designation of roads, trails, and areas. Section 212.55(a) would include the general criteria for designating roads, trails, and areas. Half of these criteria come from section 3(a) of E.O. 11644 and the current § 212.2(b) (which would be removed by the proposed rule). These criteria include protection of National Forest resources, promotion of public safety, and minimization of conflicts among uses of National Forest System lands. Although these criteria come from E.O. 11644 and part 295, which apply only to off-road motor vehicle use, these criteria are general enough to be appropriate for designating roads for motor vehicle use under the proposed rule.

Section 212.55(a) of the proposed rule would add the following to these general criteria: Provision of recreational opportunities; access needs; the need for maintenance and administration of roads, trails, and areas that would arise if the uses under consideration are designated; and the availability of resources for that maintenance and administration. A key goal of the designated system for motor vehicle use would be to provide recreational opportunities. In designating roads, trails and areas for motor vehicle use, the agency needs to address access to National Forest System lands for a variety of purposes, including recreational and non-recreational use. Maintenance and administration needs arise from designation of roads, trails, and areas for motor vehicle use. These needs, and the availability of resources to address those needs, would be taken into account in designating roads, trails, and areas under the proposed rule.

Section 212.55(b) Specific criteria for designation of trails and areas. Section 212.55(b) would include the specific criteria for designating trails and areas in section 3(a) of E.O. 11644 and the current § 295.2(b) (which would be removed by the proposed rule). These criteria are keyed to off-road motor vehicle use and therefore would not apply to designation of roads under the proposed rule. Section 212.55(b) would add consistency with the agency's trail management objectives to the preexisting criteria. The criteria for designating trails and areas would include consideration of effects on the following, with the objective of minimizing:

(1) Damage to soil, watershed, vegetation, and other forest resources;

(2) Harassment of wildlife and significant disruption of wildlife habitats;

(3) Conflicts between motor vehicle use and existing or proposed recreational uses of National Forest System lands or neighboring Federal lands; and

(4) Conflicts among different classes of motor vehicle uses of National Forest System lands or neighboring Federal lands.

In addition, the responsible official would consider:

(5) Compatibility of motor vehicle use with existing conditions in populated areas, taking into account sound, emissions, and other factors; and

(6) Consistency with trail management objectives.

E.O. 11644 states that its implementing regulations shall direct that designation of trails and areas for motor vehicle use be based upon certain general criteria, which are set out in § 212.55(a) of the proposed rule. For example, section 3(a) of E.O. 11644 states that implementing regulations ''shall direct that the designation of such areas and trails will be based upon the protection of the resources of the public lands * * *.'' E.O. 11644 also provides that its implementing regulations shall require that designation of trails and areas for motor vehicle use be in accordance with achieving the objectives in specific criteria, which are set out in § 212.55(b) of the proposed rule. Section 3(a) also states that implementing regulations ''shall further require that the designation of such areas and trails shall be in accordance with the following—(1) Areas and trails shall be located to minimize damage to soil, watershed, vegetation, or other resources of the public lands * * *.''

The agency believes that these provisions of E.O. 11644 establish the criteria that must be considered in designating trails and areas for motor vehicle use. The agency believes that these criteria are objectives that the agency must evaluate in designating trails and areas, rather than required outcomes. Section 3(a) of E.O. 11644 does not establish the primacy or subservience of any particular use relative to other uses of trails and areas. Accordingly, § 212.55(a) and (b) of the proposed rule would require the responsible official to consider the criteria enumerated in those sections in designating roads, trails, and areas or trails and areas, respectively.

In requiring consideration of the enumerated criteria in designating roads, trails, and areas, the proposed rule would give the responsible official

discretion to weigh the pertinent criteria in each specific circumstance and to select from a variety of options, depending on that circumstance. For example, based upon consideration of the pertinent criteria, the responsible official could decide to designate a road, trail, or area because there would be no measurable or appreciable effects on National Forest System resources or other uses, as in a dry location where the soil is stable, there are few or no other uses, and there are limited wildlife concerns. Alternatively, based upon consideration of the pertinent criteria, the responsible official could decide to designate a road, trail, or area after mitigation of adverse effects, such as where a road, trail, or area is designated for use seasonally to accommodate elk calving in the vicinity. Based upon consideration of the pertinent criteria, the responsible official alternatively could decide not to designate a road, trail, or area because designation would result in considerable adverse effects on National Forest System resources and other uses that could not be mitigated, such as where there are primarily nonmotorized uses such as hiking, where there is a municipal watershed with highly erosive soils, or where there is a wide variety of threatened, endangered, or sensitive species habitat.

Section 212.55(c) Specific criteria for designation of roads. Section 212.55(c) of the proposed rule would include the specific criteria for designating roads, which are based on objectives in agency policy for management of motor vehicle use on roads. These criteria include:

(1) Speed, volume, composition, and distribution of traffic on roads; and

(2) Consistency with road management objectives.

To a certain degree, National Forest System roads are in effect already designated for some classes of motor vehicle use pursuant to State law and assignment of the Forest Service's road maintenance levels. To avoid an unnecessary process in connection with designation of roads, the Forest Service would capture these de facto designations in implementing this proposed rule. For example, the agency could provide that all open National Forest System roads are presumptively designated for use by motor vehicles meeting the operator qualifications, vehicle licensing, and vehicle equipment requirements for use of public roads under applicable State law.

In addition, it may be possible to provide that Forest Service road maintenance levels are keyed to certain motor vehicle classes, and that by setting a certain maintenance level for a National Forest System road, the agency has also designated the road for use by certain vehicle classes. For example, since National Forest System roads at maintenance level 2 are suitable for high-clearance motor vehicles, such as commercial trucks and SUVs, that meet motor vehicle requirements for use of public roads under applicable State law, the agency could provide that National Forest System roads at maintenance level 2 are presumptively designated for those motor vehicles.

The agency could still allow use of a National Forest System road, if deemed appropriate, by vehicles such as OHVs that may not be used on public roads under State law. United States Department of Transportation regulations and Forest Service directives require that provisions of the Highway Safety Act apply on roads managed as open to public travel, that is, National Forest System roads at road maintenance levels 3, 4, and 5. In general, National Forest System roads subject to the Highway Safety Act would be designated for use by OHVs only in special circumstances and only upon completion of an engineering study to establish the traffic control devices and signs needed for user safety.

Section 212.55(d) Rights of access. Section 212.55(d) would provide that in making designations pursuant to part 251, subpart B, the responsible official must be consistent with rights of access. These rights of access include valid existing rights; the rights of use of National Forest System roads and trails under § 212.6(b); and the provisions concerning rights of access in sections 811 and 1110(a) of the Alaska National Interest Lands Conservation Act (ANILCA) (16 U.S.C. 3121 and 3170(a), respectively) (note that section 811 of ANILCA applies only in Alaska).

Examples of valid existing rights include a valid outstanding or reserved right-of-way for a road or trail in existence at the time title to the underlying land was acquired by the United States and a right-of-way for a road or trail acquired by the United States, where the owner of the underlying land may have retained control of the right-of-way and may have reserved the right to allow others to use it. Designations could still apply to uses outside the scope of the first type of right-of-way and could apply to uses within the scope of either type of right-of-way if the Forest Service has reserved the right to regulate use of the right-of-way.

Section 212.55(e) Congressionally designated wilderness and primitive areas. Section 3(a)(4) of E.O. 11644 and the current § 295.2(b)(4) (which would be removed by this proposed rule) state that trails and areas in Congressionally designated wilderness and primitive areas shall not be designated for motor vehicle use. Each Congressionally designated wilderness area has enabling legislation. Some of these statutes may provide for motor vehicle use in a particular wilderness area. Accordingly, § 212.55(e) of the proposed rule would preclude National Forest System roads, National Forest System trails, and areas on National Forest System lands in Congressionally designated wilderness areas from being designated for motor vehicle use, unless motor vehicle use is authorized by the applicable enabling legislation for those areas.

Section 212.56 Identification of designated roads, trails, and areas. Section 5 of E.O. 11644 and § 295.4 require publication and distribution of information, including maps, identifying and explaining designation of trails and areas for motor vehicle use. Section 212.56 of the proposed rule would provide that designated roads, trails, and areas must be identified in a use map as defined in the proposed rule. Section 212.56 would also provide that use maps are to be made available to the public at the headquarters of corresponding administrative units of the National Forest System. ''Made available to the public'' would not necessarily mean making the maps available free of charge. The use maps would specify the classes of vehicles and, if appropriate, the times of year for which use is designated. Use maps also could reflect designations for nonmotorized uses, such as horseback riding and hiking, and restrictions or prohibitions on snowmobile use established pursuant to § 212.58 of the proposed rule.

Section 5 of E.O. 11644 also provides that designated trails and areas are to be well marked. The agency believes that marking of designated roads, trails, and areas may vary depending on the circumstances and that consequently some discretion is needed in the context of marking these routes and areas. Therefore, the agency believes that marking of designated roads, trails, and areas is best addressed in agency policy, rather than regulations.

Section 212.57 Monitoring of effects of motor vehicle use on designated roads and trails and in designated areas. Section 8 of E.O. 11644 and current § 295.5 (which would be removed by the proposed rule) require the Forest Service to monitor the effects of motor vehicle use on designated trails and areas under the jurisdiction of the Forest Service. Accordingly, § 212.57 of

the proposed rule would provide that for each administrative unit of the National Forest System, the Forest Supervisor, or other responsible official, shall monitor the effects of motor vehicle use on designated roads and trails and in designated areas under the jurisdiction of that Forest Supervisor or other responsible official. The results of monitoring could provide the basis for revision or rescission of designations made pursuant to § 212.51 of the proposed rule, as provided in section 8(a) of E.O. 11644, or for a determination of considerable adverse effects for purposes of implementing a temporary, emergency closure pursuant to § 212.52(b)(2) of the proposed rule.

Section 212.57, like section 8 of E.O. 11644 and the current § 295.5, would not prescribe how monitoring is to be conducted. The agency believes that monitoring of designated roads, trails, and areas may vary depending on the circumstances and that some discretion is needed in the context of monitoring these routes and areas. Therefore, the agency believes that monitoring of designated roads, trails, and areas is best addressed in agency policy, rather than regulations.

Part 212, New Subpart C—Snowmobile Use

Section 212.80 Purpose and scope. The purpose of this subpart would be to provide for regulation of snowmobile use on National Forest System roads and National Forest System trails and in areas on National Forest System lands.

Section 212.81 Snowmobile use. Section 212.81 of the proposed rule would preserve the authority in E.O. 11644 and E.O. 11989 and in the current part 295 (which would be removed by this proposed rule) to allow, restrict, or prohibit snowmobile use on a discretionary basis. Section 212.81(a) and (b) would provide that snowmobile use on National Forest System roads and National Forest System trails and in areas on National Forest System lands may be allowed, restricted, or prohibited, provided that the following uses would be exempted from restrictions or prohibitions on snowmobile use:

(a) Limited administrative use by the Forest Service;

(b) Use of any fire, military, emergency, or law enforcement vehicle for emergency purposes;

(c) Authorized use of any combat or combat support vehicle for national defense purposes;

(d) Law enforcement response to violations of law, including pursuit; and

(e) Use and occupancy of National Forest System lands and resources pursuant to a written authorization issued under Federal law or regulations.

These exemptions are found in E.O. 11644 and E.O. 11989 and in the current part 295.

As stated previously in the discussion of § 212.51 of the proposed rule, a snowmobile traveling over snow results in different and less severe impacts to natural resource values than wheeled motor vehicles traveling over the ground. Consequently, in contrast to wheeled motor vehicles, it may be appropriate for snowmobiles to travel off route in relatively large, dispersed areas on National Forest System lands.

Section 212.81(c) of the proposed rule would provide that the requirements governing designation of National Forest System roads, National Forest System trails, and areas on National Forest System lands in §§ 212.52 (public involvement); 212.53 (coordination with other governmental entities); 212.54 (as applied to snowmobile use, revision of restrictions and prohibitions); 212.55 (as applied to snowmobile use, criteria for restrictions and prohibitions); 212.56 (as applied to snowmobile use, identification of restrictions and prohibitions); and 212.57 (monitoring the effects of motor vehicle use) shall apply to establishment of any restrictions or prohibitions on snowmobile use.

Revisions to Part 251—Land Uses, Subpart B—Special Uses

Section 251.51 Definitions. Like § 212.1 of the proposed rule, the current § 251.51 contains definitions for forest road, National Forest System road, and National Forest System trail. However, § 251.51 lacks a definition for a road or trail under Forest Service jurisdiction, which is a component of the definition for National Forest System road and National Forest System trail. Therefore, to make the definition in § 251.51 consistent with those in § 212.1 of the proposed rule, a definition for a road or trail under Forest Service jurisdiction would be added to § 251.51.

Revisions to Part 261—Prohibitions, Subpart A—General Prohibitions

Section 261.2 Definitions. The proposed rule would revise the definition for motor vehicle in § 261.2 to make it consistent with the definition for motor vehicle in § 212.1 of the proposed rule, which excludes wheelchairs and other mobility devices as defined in the Americans With Disabilities Act.

Like § 212.1 of the proposed rule, the current § 261.2 contains definitions for forest road or trail, National Forest System road, and National Forest System trail. However, § 261.2 lacks a definition for a road or trail under Forest Service jurisdiction, which is a component of the definition for National Forest System road and National Forest System trail. To make the definitions in § 261.2 consistent with § 212.1 of the proposed rule, a definition for a road or trail under Forest Service jurisdiction would be added to § 261.2 of the proposed rule.

Section 261.13 Motor vehicle use. Section 6 of E.O. 11644 requires the Forest Service, where authorized by law, to prescribe appropriate penalties for violation of regulations adopted pursuant to that E.O. and to establish procedures for enforcement of those regulations. Accordingly, the proposed rule would add a new prohibition to part 261, subpart A, for enforcement of designations made pursuant to § 212.51 of the proposed rule. Enforcement of designations for motor vehicle use made pursuant to § 212.51 of the proposed rule using a prohibition in part 261, subpart A, would be simpler than enforcement of restrictions and prohibitions under the current part 295 (part 295 would be removed by this proposed rule), which requires issuance of an order under part 261, subpart B, and issuance of a citation for violation of that order. Enforcement of a prohibition in part 261, subpart A, can be accomplished simply through issuance of a citation.

The prohibition in § 261.13 of the proposed rule would not go into effect and could not be enforced until roads, trails, and areas have been designated pursuant to § 212.51 of the proposed rule, in accordance with the requirements in proposed part 212, subpart B, including the requirements in the proposed rule for public input in § 212.52 and the criteria in § 212.55. Under proposed § 261.13, after roads, trails, and areas have been designated pursuant to § 212.51 on an administrative unit or a ranger district of the National Forest System, it would be prohibited to possess or operate a motor vehicle on National Forest System lands in that administrative unit or ranger district other than in accordance with those designations, provided that the following vehicles and uses would be exempted from this prohibition:

(a) Aircraft;

(b) Watercraft;

(c) Snowmobiles;

(d) Limited administrative use by the Forest Service;

(e) Use of any fire, military, emergency, or law enforcement vehicle for emergency purposes;

(f) Authorized use of any combat or combat support vehicle for national defense purposes;

(g) Law enforcement response to violations of law, including pursuit;

(h) Use and occupancy of National Forest System lands and resources pursuant to a written authorization issued under Federal law or regulations; and

(i) Use of a road or trail that is not under Forest Service jurisdiction.

These vehicles and uses are also exempted from the designations made pursuant to § 212.51. These exemptions are enumerated in § 212.51(a) through (h). The counterpart for exemption (i) is the scope of § 212.51, which with respect to roads and trails is limited to designating motor vehicle use on National Forest System roads and National Forest System trails, *i.e.*, forest roads or trails under the jurisdiction of the Forest Service. Since designations for motor vehicle use established pursuant to § 212.51 of the proposed rule would not apply to roads or trails that are not under Forest Service jurisdiction, a prohibition enforcing designations for motor vehicle use established pursuant to § 212.51 of the proposed rule would not apply to motor vehicle use on roads or trails that are not under Forest Service jurisdiction.

Section 261.14 Snowmobile use. Section 6 of E.O. 11644 requires the Forest Service, where authorized by law, to prescribe appropriate penalties for violation of regulations adopted pursuant to that E.O. and to establish procedures for enforcement of those regulations. Accordingly, the proposed rule would add a new prohibition to part 261, subpart A, for enforcement of restrictions and prohibitions regarding snowmobile use established pursuant to § 212.81 of the proposed rule. Enforcement of snowmobile restrictions and prohibitions established pursuant to § 212.81 of the proposed rule using a prohibition in part 261, subpart A, would be simpler than enforcement of restrictions and prohibitions under the current part 295 (which would be removed by this proposed rule), which requires issuance of an order under part 261, subpart B, and issuance of a citation for violation of that order. Enforcement of a prohibition in part 261, subpart A, can be accomplished simply through issuance of a citation.

Under proposed § 261.14, it would be prohibited to possess or operate a snowmobile on National Forest System lands in violation of a restriction or prohibition established pursuant to proposed § 212.81, provided that the following uses would be exempted from this prohibition:

(a) Limited administrative use by the Forest Service;

(b) Use of any fire, military, emergency, or law enforcement vehicle for emergency purposes;

(c) Authorized use of any combat or combat support vehicle for national defense purposes;

(d) Law enforcement response to violations of law, including pursuit;

(e) Use and occupancy of National Forest System lands and resources pursuant to a written authorization issued under Federal law or regulations; and

(f) Use of a road or trail that is not under Forest Service jurisdiction.

These uses are also exempted from the restrictions and prohibitions established pursuant to § 212.81 of the proposed rule. Exemptions (a) through (e) are enumerated in § 212.81(b). The counterpart for exemption (f) is the scope of § 212.81(a), which with respect to roads and trails is limited to establishing restrictions or prohibitions on snowmobile use on National Forest System roads and National Forest System trails, such as, forest roads or trails under the jurisdiction of the Forest Service. Since restrictions and prohibitions on snowmobile use established pursuant to § 212.81 of the proposed rule would not apply to snowmobile use on roads or trails that are not under Forest Service jurisdiction, a prohibition enforcing restrictions and prohibitions on snowmobile use established pursuant to § 212.81 of the proposed rule would not apply to snowmobile use on roads or trails that are not under Forest Service jurisdiction.

Removal of Part 295—Use of Motor Vehicles Off National Forest System Roads

Part 295 would be removed, as its provisions, with the exception of § 295.6, requiring annual review of motor vehicle management plans and temporary designations, would be integrated into part 212, subpart B, of the proposed rule. Section 295.6 would not be retained because it has no antecedent in E.O. 11644 or E.O. 11989 and inappropriately removes discretion from the responsible official to determine how often to review designations of roads, trails, and areas for motor vehicle use.

Proposed part 212, subpart B, would provide more consistency in management of motor vehicle use than the current part 295. In contrast to the current part 295, which allows for a patchwork of restrictions and prohibitions on motor vehicle use on National Forest System lands, proposed part 212, subpart B, would require designation of National Forest System roads, National Forest System trails, and areas on National Forest System lands for motor vehicle use.

In addition, designations made pursuant to proposed part 212, subpart B, would be broader than any restrictions or prohibitions implemented pursuant to the current part 295 because designations made pursuant to part 212, subpart B, would apply to motor vehicle use on National Forest System roads, as well as off National Forest System roads.

Regulatory Certifications

Environmental Impact

This proposed rule would require development at the field level, with public input, of a designated system for motor vehicle use on National Forest System roads and trails and in areas on National Forest System lands. The proposed rule would have no effect on the ground until designations of roads, trails, and areas are completed at the field level, with opportunity for public involvement. Section 31b of Forest Service Handbook 1909.15 (57 FR 43180, September 18, 1992) excludes from documentation in an environmental assessment or environmental impact statement ''rules, regulations, or policies to establish Service-wide administrative procedures, program processes, or instructions.'' The agency's conclusion is that this proposed rule falls within this category of actions and that no extraordinary circumstances exist which would require preparation of an environmental assessment or environmental impact statement.

Regulatory Impact

This proposed rule has been reviewed under USDA procedures and Executive Order (E.O.) 12866 on regulatory planning and review. The Office of Management and Budget (OMB) has determined that this proposed rule is not significant for purposes of E.O. 12866. This proposed rule would not have an annual effect of $100 million or more on the economy, nor would it adversely affect productivity, competition, jobs, the environment, public health and safety, or State and local governments. This proposed rule would not interfere with any action taken or planned by another agency, nor would it raise new legal or policy issues. Finally, this proposed rule would not alter the budgetary impact of entitlements, grants, user fees, or loan programs or the rights and obligations of beneficiaries of such programs.

Accordingly, this proposed rule is not subject to OMB review under E.O. 12866.

Regulatory Flexibility Act Analysis

This proposed rule has been considered in light of the Regulatory Flexibility Act (5 U.S.C. 602 *et seq.*). The proposed rule would not have any effect on small entities as defined by the Regulatory Flexibility Act. The proposed rule would require development at the field level, with public input, of a designated system for motor vehicle use on National Forest System roads and trails and in areas on National Forest System lands. The proposed rule would not directly affect small businesses, small organizations, and small governmental jurisdictions. Therefore, the agency has determined that this proposed rule would not have a significant economic impact on a substantial number of small entities pursuant to the Regulatory Flexibility Act because it would not impose recordkeeping requirements on them; it would not affect their competitive position in relation to large entities; and it would not affect their cash flow, liquidity, or ability to remain in the market.

No Takings Implications

This proposed rule has been analyzed in accordance with the principles and criteria contained in E.O. 12630. It has been determined that this rule would not pose the risk of a taking of private property.

Civil Justice Reform

This proposed rule has been reviewed under E.O. 12988 on civil justice reform. After adoption of this proposed rule, (1) all State and local laws and regulations that conflict with this rule or that impede its full implementation would be preempted; (2) no retroactive effect would be given to this final rule; and (3) it would not require administrative proceedings before parties may file suit in court challenging its provisions.

Federalism and Consultation and Coordination With Indian Tribal Governments

The agency has considered this proposed rule under the requirements of E.O. 13132 on federalism, and has determined that the proposed rule conforms with the federalism principles set out in this E.O.; would not impose any compliance costs on the States; and would not have substantial direct effects on the States, the relationship between the Federal government and the States, or the distribution of power and responsibilities among the various levels of government. Therefore, the agency has determined that no further assessment of federalism implications is necessary.

Moreover, this proposed rule would not have Tribal implications as defined by E.O. 13175, Consultation and Coordination With Indian Tribal Governments, and therefore advance consultation with Tribes is not required.

Energy Effects

This proposed rule has been reviewed under E.O. 13211 of May 18, 2001, Actions Concerning Regulations That Significantly Affect the Energy Supply. It has been determined that this proposed rule would not constitute a significant energy action as defined in the E.O.

Unfunded Mandates

Pursuant to Title II of the Unfunded Mandates Reform Act of 1995 (2 U.S.C. 1531–1538), which the President signed into law on March 22, 1995, the agency has assessed the effects of this proposed rule on State, local, and Tribal governments and the private sector. This proposed rule would not compel the expenditure of $100 million or more by any State, local, or Tribal government or anyone in the private sector. Therefore, a statement under section 202 of the act is not required.

Controlling Paperwork Burdens on the Public

This proposed rule does not contain any recordkeeping or reporting requirements or other information collection requirements as defined in 5 CFR part 1320 that are not already required by law or not already approved for use. Accordingly, the review provisions of the Paperwork Reduction Act of 1995 (44 U.S.C. 3501 *et seq.*) and its implementing regulations at 5 CFR part 1320 do not apply.

List of Subjects

36 CFR Part 212

Highways and roads, National forests, Public lands—rights-of-way, and Transportation.

36 CFR Part 251

Administrative practice and procedure, Electric power, National forests, Public lands rights-of-way, Reporting and recordkeeping requirements, Water resources.

36 CFR Part 261

Law enforcement, National forests.

36 CFR Part 295

National forests, Traffic regulations.

Therefore, for the reasons set out in the preamble, the Forest Service proposes to amend part 212, subpart B of part 251, and subpart A of part 261 and to remove part 295 of title 36 of the Code of Federal Regulations as follows:

PART 212—TRAVEL MANAGEMENT

§§ 212.1 through 212.21 [Designated as subpart A]

1. Sections 212.1 through 212.21 are designated as Subpart A—Administration of the Forest Transportation System, and the authority citation for part 212 is designated as the authority citation for subpart A and continues to read as follows:

Authority: 16 U.S.C. 551; 23 U.S.C. 205.

2. The heading for part 212 is revised to read as set forth above.

3. Amend § 212.1 as follows:

a. In alphabetical order, add the following definitions: *administrative unit; area; designated road, trail, or area; forest road or trail; forest transportation system; motor vehicle; National Forest System road; National Forest System trail; road or trail under Forest Service jurisdiction; snowmobile; temporary road or trail; trail; travel management atlas; unauthorized or unclassified road* or trail; and *use map;* and

b. Revise the definition for *forest transportation atlas* and *road,* and remove the definitions for classified road, temporary road, and unclassified road.

The additions and revisions read as follows:

§ 212.1 Definitions.

Administrative unit. A national forest, a national grassland, Land Between the Lakes, Lake Tahoe Basin Management Unit, or Midewin National Tallgrass Prairie.

Area. A discrete, specifically delineated space that is smaller than a ranger district.

* * * * *

Designated road, trail, or area. A National Forest System road, a National Forest System trail, or an area on National Forest System lands that is designated for motor vehicle use pursuant to § 212.51 in a use map contained in a travel management atlas.

* * * * *

Forest road or trail. A road or trail wholly or partly within or adjacent to and serving the National Forest System that the Forest Service determines is necessary for the protection, administration, and utilization of the National Forest System and the use and

development of its resources, and that is included in a forest transportation atlas.

Forest transportation atlas. A display of the system of roads, trails, and airfields of an administrative unit of the National Forest System that consists of the geospatial, tabular, and other data that support resource management activities and analysis associated with resource management goals in the applicable land management plan.

* * * * *

Forest transportation system. The system of National Forest System roads, National Forest System trails, and airfields on National Forest System lands that are included in a forest transportation atlas.

* * * * *

Motor vehicle. Any vehicle which is self-propelled, other than:

(1) A vehicle operated on rails; and

(2) Any wheelchair or mobility device, including one that is battery-powered, that is designed solely for use by a mobility-impaired person for locomotion, and that is suitable for use in an indoor pedestrian area.

* * * * *

National Forest System road. A forest road under the jurisdiction of the Forest Service.

National Forest System trail. A forest trail under the jurisdiction of the Forest Service.

* * * * *

Road. A motor vehicle route over 50 inches wide, unless identified and managed as a trail. A road may be a forest road, a temporary road, or an unauthorized or unclassified road.

* * * * *

Road or trail under Forest Service jurisdiction. For the purposes only of the definitions of National Forest System road and National Forest System trail, a road or trail located on National Forest System lands, other than a road or trail:

(1) Which has been authorized by a legally documented right-of-way held by a State, County, or local public road authority; or

(2) Which an authorized officer has ascertained, for administrative purposes and based on available evidence, is within a public right-of-way for a highway, such as a right-of-way for a highway pursuant to R.S. 2477 (43 U.S.C. 932, repealed Oct. 21, 1976).

* * * * *

Snowmobile. A motor vehicle that is designed exclusively for use over snow and that runs on a track or tracks and/or a ski or skis.

Temporary road or trail. A road or trail necessary for emergency operations or authorized by contract, permit, lease, or other written authorization that is not a forest road or a forest trail and that is not included in a forest transportation atlas.

Trail. A route 50 inches or less in width or a route over 50 inches wide that is identified and managed as a trail. A trail may be a forest trail, a temporary trail, or an unauthorized or unclassified trail.

Travel management atlas. An atlas that includes a forest transportation atlas and a use map.

Unauthorized or unclassified road or trail. A road or trail that is not a forest road or trail or a temporary road or trail and that is not included in a forest transportation atlas.

Use map. A map reflecting designated roads, trails, and areas on an administrative unit or a ranger district of the National Forest System that is part of a travel management atlas.

4. Amend § 212.2 by revising paragraph (a), redesignating paragraph (b) as (d), and adding new paragraphs (b) and (c) to read as follows:

§ 212.2 Forest transportation program.

(a) Travel management atlas. For each administrative unit of the National Forest System, the Forest Supervisor or other responsible official must develop and maintain a travel management atlas, which is to be available to the public at the headquarters of that administrative unit.

(b) Forest transportation atlas. A forest transportation atlas may be updated to reflect new information on the existence and condition of roads, trails, and airfields of the administrative unit. A forest transportation atlas does not contain inventories of temporary roads, which are tracked by the project or activity authorizing the temporary road. The content and maintenance requirements for a forest transportation atlas are identified in the Forest Service directive system (§ 200.1).

(c) Program of work for the forest transportation system. A program of work for the forest transportation system shall be developed each fiscal year in accordance with procedures prescribed by the Chief.

* * * * *

5. Revise § 212.5 as follows:

a. Revise paragraphs (a)(1) and (a)(2)(ii);

b. Revise the heading for paragraph (c) to read ''Cost recovery on National Forest System roads''; and

c. Revise the heading for paragraph (d) to read ''Maintenance and reconstruction of National Forest System roads by users.''

§ 212.5 Road system management.

(a) Traffic rules. * * *

(1) General. Traffic on roads is subject to State traffic laws where applicable except when in conflict with designations established under subpart B of this part or with the rules at 36 CFR part 261.

(2) Specific. * * *

(ii) Roads, or segments thereof, may be restricted to use by certain classes of vehicles or types of traffic as provided in 36 CFR part 261. Classes of vehicles may include but are not limited to distinguishable groupings such as passenger cars, buses, trucks, motorcycles, automobiles, 4-wheel drive vehicles, off-highway vehicles and trailers. Types of traffic may include, but are not limited to, groupings such as commercial hauling, recreation, and administrative.

* * * * *

6. Revise the paragraph heading for § 212.7(a) to read as follows:

§ 212.7. Access procurement by the United States.

(a) Existing or proposed National Forest System roads which are or will be part of a system of a State, county, or other local subdivision.

* * * * *

7. Revise § 212.10(d) to read as follows:

§ 212.10 Maximum economy National Forest System roads.

* * * * *

(d) By a combination of these methods, provided that where roads are to be constructed at a higher standard than the standard, consistent with applicable environmental laws and regulations, that is sufficient for harvesting and removal of National Forest timber and other products covered by a particular sale, the purchaser of the timber and other products shall not be required to bear the part of the cost necessary to meet the higher standard, and the Chief may make such arrangements to achieve this end as may be appropriate.

§ 212.20 [Removed]

8. Remove and reserve § 212.20.

9. Add a new subpart B to read as follows:

Subpart B—Designation of Roads, Trails, and Areas for Motor Vehicle Use

Sec.

Authority: 7 U.S.C. 1011(f); 16 U.S.C. 551; E.O. 11644, 37 FR 2877, 3 CFR, 1971–1975 Comp., p. 666, 11989, 42 FR 26959, 3 CFR, 1977 Comp., p. 120.

§ 212.50 Purpose and scope; definitions.

(a) The purpose of this subpart is to provide for a system of National Forest System roads, National Forest System trails, and areas on National Forest System lands that are designated for motor vehicle use. After these roads, trails, and areas are designated, motor vehicle use, including the class of vehicle and time of year, not in accordance with these designations is prohibited by 36 CFR 261.13. Motor vehicle use off designated roads and trails and outside designated areas is prohibited by 36 CFR 261.13.

(b) For definitions of terms used in this subpart, refer to § 212.1 in subpart A of this part.

§ 212.51 Designation of roads, trails, and areas.

Motor vehicle use on National Forest System roads, on National Forest System trails, and in areas on National Forest System lands shall be designated by vehicle class and, if appropriate, by time of year by the responsible official on administrative units or ranger districts of the National Forest System, provided that the following vehicles and uses are exempted from these designations:

(a) Aircraft;

(b) Watercraft;

(c) Snowmobiles (*see* § 212.81);

(d) Limited administrative use by the Forest Service;

(e) Use of any fire, military, emergency, or law enforcement vehicle for emergency purposes;

(f) Authorized use of any combat or combat support vehicle for national defense purposes;

(g) Law enforcement response to violations of law, including pursuit; and

(h) Use and occupancy of National Forest System lands and resources pursuant to a written authorization issued under Federal law or regulations.

§ 212.52 Public involvement in the designation process.

(a) General. The public shall be allowed to participate in the process of designating National Forest System roads, National Forest System trails, and areas on National Forest System lands and revising those designations pursuant to this subpart. Advance notice shall be given to allow for public comment on proposed designations and revisions.

(b) Absence of public involvement in temporary, emergency closures. (1) General. Nothing in this section shall alter or limit the authority to implement temporary, emergency closures pursuant to 36 CFR part 261, subpart B, without advance public notice to provide short-term resource protection or to protect public health and safety.

(2) Temporary, emergency closures based on a determination of considerable adverse effects. If, based on monitoring pursuant to § 212.57, the Forest Supervisor or other responsible official determines that motor vehicle use on a National Forest System road or National Forest System trail or in an area on National Forest System lands is causing or will cause considerable adverse effects on public safety or soil, vegetation, wildlife, wildlife habitat, or cultural or historic resources associated with that road, trail, or area, the Forest Supervisor or other responsible official shall immediately close that road, trail, or area to motor vehicle use until the official determines that such adverse effects have been mitigated or eliminated and that measures have been implemented to prevent future recurrence.

§ 212.53 Coordination with Federal, State, county, and other local governmental entities and tribal governments.

The Forest Supervisor or other responsible official shall coordinate with appropriate Federal, State, County, and other local governmental entities and Tribal governments when designating National Forest System roads, National Forest System trails and areas on National Forest System lands pursuant to this subpart.

§ 212.54 Revision of designations.

Designations of National Forest System roads, National Forest System trails, and areas on National Forest System lands pursuant to § 212.51 may be revised as needed to meet changing conditions. Revisions of designations shall be made in accordance with the requirements for public involvement in § 212.52 and the criteria in § 212.55, and shall be reflected on a use map pursuant to § 212.56.

§ 212.55 Criteria for designation of roads, trails, and areas.

(a) General criteria for designation of National Forest System roads, National Forest System trails, and areas on National Forest System lands. In designating National Forest System roads, National Forest System trails, and areas on National Forest System lands for motor vehicle use, the responsible official shall consider protection of National Forest System resources, promotion of public safety, provision of recreational opportunities, access needs, minimization of conflicts among uses of National Forest System lands, the need for maintenance and administration of roads, trails, and areas that would arise if the uses under consideration are designated; and the availability of resources for that maintenance and administration.

(b) Specific criteria for designation of trails and areas. In addition to the criteria in paragraph (a) of this section, in designating National Forest System trails and areas on National Forest System lands, the responsible official shall consider effects on the following, with the objective of minimizing:

(1) Damage to soil, watershed, vegetation, and other forest resources;

(2) Harassment of wildlife and significant disruption of wildlife habitats;

(3) Conflicts between motor vehicle use and existing or proposed recreational uses of National Forest System lands or neighboring Federal lands; and

(4) Conflicts among different classes of motor vehicle uses of National Forest System lands or neighboring Federal lands.

In addition, the responsible official shall consider:

(5) Compatibility of motor vehicle use with existing conditions in populated areas, taking into account sound, emissions, and other factors; and

(6) Consistency with trail management objectives.

(c) Specific criteria for designation of roads. In addition to the criteria in paragraph (a) of this section, in designating National Forest System roads, the responsible official shall be consistent with:

(1) Speed, volume, composition, and distribution of traffic on roads; and

(2) Consistency with road management objectives.

(d) Rights of access. In making designations pursuant to this subpart, the responsible official shall take into account:

(1) Valid existing rights;

(2) The provisions concerning rights of access in sections 811 and 1110(a) of the Alaska National Interest Lands Conservation Act (16 U.S.C. 3121 and 3170(a), respectively); and

(3) The rights of use of National Forest System roads and trails under § 212.6(b).

(e) Congressionally designated wilderness areas and primitive areas. National Forest System roads, National Forest System trails, and areas on National Forest System lands in Congressionally designated wilderness areas or primitive areas shall not be designated for motor vehicle use pursuant to this section, unless, in the case of wilderness areas, motor vehicle use is authorized by the applicable enabling legislation for those areas.

§ 212.56 Identification of designated roads, trails, and areas.

Designated roads, trails, and areas shall be identified in a use map as defined in § 212.1 of this part. Use maps shall be made available to the public at the headquarters of corresponding administrative units of the National Forest System. The use maps shall specify the classes of vehicles and, if appropriate, the times of year for which use is designated.

§ 212.57 Monitoring of effects of motor vehicle use on designated roads and trails and in designated areas.

For each administrative unit of the National Forest System, the Forest Supervisor or other responsible official shall monitor the effects of motor vehicle use on designated roads and trails and in designated areas under the jurisdiction of that Forest Supervisor or other responsible official.

10. Add a new subpart C to read as follows:

Subpart C—Snowmobile Use

Authority: 7 U.S.C. 1011(f); 16 U.S.C. 551; E.O. 11644, 37 FR 2877, 3 CFR, 1971–1975 Comp., p. 666, 11989, 42 FR 26959, 3 CFR, 1977 Comp., p. 120.

§ 212.80 Purpose and scope; definitions.

(a) The purpose of this subpart is to provide for regulation of snowmobile use on National Forest System roads and National Forest System trails and in areas on National Forest System lands.

(b) For definitions of terms used in this subpart, refer to § 212.1 in subpart A of this part.

§ 212.81 Snowmobile use.

(a) General. Snowmobile use on National Forest System roads and National Forest System trails and in areas on National Forest System lands may be allowed, restricted, or prohibited.

(b) Exemptions from restrictions and prohibitions. The following uses are exempted from restrictions and prohibitions on snowmobile use:

(1) Limited administrative use by the Forest Service;

(2) Use of any fire, military, emergency, or law enforcement vehicle for emergency purposes;

(3) Authorized use of any combat or combat support vehicle for national defense purposes;

(4) Law enforcement response to violations of law, including pursuit; and

(5) Use and occupancy of National Forest System lands and resources pursuant to a written authorization issued under Federal law or regulations.

(c) Establishment of restrictions and prohibitions. The requirements governing designation of National Forest System roads, National Forest System trails, and areas on National Forest System lands in §§ 212.52 through 212.57 shall apply to establishment of any restrictions or prohibitions on snowmobile use.

PART 251—LAND USES

Subpart B—Special Uses

11. Revise the authority citation for part 251, subpart B, to read as follows:

Authority: 7 U.S.C. 1011(f); 16 U.S.C. 460*l*–6a, 460*l*–6d, 472, 497b, 497c, 551, 580d, 1134, 3210; 30 U.S.C. 185; 43 U.S.C. 1740, 1761–1771.

12. Add a definition to § 251.51 for *road or trail under Forest Service jurisdiction,* in alphabetical order, to read as follows:

§ 251.51 Definitions.

* * * * *

Road or trail under Forest Service jurisdiction. For the purposes only of the definitions of National Forest System road and National Forest System trail, a road or trail located on National Forest System lands, other than a road or trail:

(1) Which has been authorized by a legally documented right-of-way held by a State, County, or local public road authority; or

(2) Which an authorized officer has ascertained, for administrative purposes and based on available evidence, is within a public right-of-way for a highway, such as a right-of-way for a highway pursuant to R.S. 2477 (43 U.S.C. 932, repealed Oct. 21, 1976).

* * * * *

PART 261—PROHIBITIONS

13. The authority citation for part 261 continues to read as follows:

Authority: 7 U.S.C. 1011(f); 16 U.S.C. 460l–6d, 472, 551, 620(f), 1133(c)–(d)(1), 1246(i).

14. Revise the definition for *motor vehicle* in § 261.2 and add a definition for *road or trail under Forest Service jurisdiction*, in alphabetical order, to read as follows:

§ 261.2 Definitions.

* * * * *

Motor vehicle means any vehicle which is self-propelled, other than:

(1) A vehicle operated on rails; and

(2) Any wheelchair or mobility device, including one that is battery-powered, that is designed solely for use by a mobility-impaired person for locomotion and that is suitable for use in an indoor pedestrian area.

* * * * *

Road or trail under Forest Service jurisdiction. For purposes only of the definitions of National Forest System road and National Forest System trail, a road or trail located on National Forest System lands, other than a road or trail:

(1) Which has been authorized by a legally documented right-of-way held by a State, County, or local public road authority; or

(2) Which an authorized officer has ascertained, for administrative purposes and based on available evidence, is within a public right-of-way for a highway, such as a right-of-way for a highway pursuant to R.S. 2477 (43 U.S.C. 932, repealed Oct. 21, 1976).

* * * * *

§§ 261.13 through 261.21 [Redesignated as §§ 261.15 through 261.23]

15. Redesignate §§ 261.13 through 261.21 as §§ 261.15 through 261.23 and add new §§ 261.13 and 261.14 to read as follows:

§ 261.13 Motor vehicle use.

After National Forest System roads, National Forest System trails, and areas on National Forest System lands have been designated pursuant to 36 CFR 212.51 on an administrative unit or a ranger district of the National Forest System, it is prohibited to possess or operate a motor vehicle on National Forest System lands in that administrative unit or ranger district other than in accordance with those designations, provided that the following vehicles and uses are exempted from this prohibition:

(a) Aircraft;

(b) Watercraft;

(c) Snowmobiles;

(d) Limited administrative use by the Forest Service;

(e) Use of any fire, military, emergency, or law enforcement vehicle for emergency purposes;

(f) Authorized use of any combat or combat support vehicle for national defense purposes;

(g) Law enforcement response to violations of law, including pursuit;

(h) Use and occupancy of National Forest System lands and resources pursuant to a written authorization issued under Federal law or regulations; and

(i) Use of a road or trail that is not under Forest Service jurisdiction.

§ 261.14 Snowmobile use.

It is prohibited to possess or operate a snowmobile on National Forest System lands in violation of a restriction or prohibition established pursuant to 36 CFR part 212, subpart C, provided that the following uses are exempted from this section:

(a) Limited administrative use by the Forest Service;

(b) Use of any fire, military, emergency, or law enforcement vehicle for emergency purposes;

(c) Authorized use of any combat or combat support vehicle for national defense purposes;

(d) Law enforcement response to violations of law, including pursuit;

(e) Use and occupancy of National Forest System lands and resources pursuant to a written authorization issued under Federal law or regulations; and

(f) Use of a road or trail that is not under Forest Service jurisdiction.

PART 295—[REMOVED]

16. Remove part 295.

Dated: July 7, 2004.

Dale N. Bosworth,

Chief.

[FR Doc. 04–15775 Filed 7–14–04; 8:45 am]

BILLING CODE 3410–11–P

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 261

[SW–FRL–7786–6]

Hazardous Waste Management System; Proposed Exclusion for Identifying and Listing Hazardous Waste

AGENCY: Environmental Protection Agency (EPA).

ACTION: Proposed rule and request for comment.

SUMMARY: The EPA (also, 'the Agency' or 'we') is proposing to grant a petition submitted by the United States Department of Energy, Richland Operations Office (DOE–RL) to exclude (or 'delist') from regulation as listed hazardous waste certain mixed waste ('petitioned waste') that are treated at the 200 Area Effluent Treatment Site (200 Area ETF) on the Hanford Facility, Richland, Washington.

The Agency proposes to conditionally grant the exclusion based on an evaluation of waste stream-specific and treatment process information provided by the DOE–RL. These proposed decisions, if finalized, would conditionally exclude the petitioned waste from the requirements of hazardous waste regulations under the Resource Conservation and Recovery Act (RCRA) of 1976 as amended.

If today's proposal is finalized, we will have concluded that DOE–RL's petitioned waste does not meet any of the criteria under which the wastes were originally listed, and that there is no reasonable basis to believe other factors exist which could cause the waste to be hazardous.

DATES: Comments. We will accept public comments on this proposed decision until August 30, 2004. We will stamp comments postmarked after the close of the comment period as 'late'. These 'late' comments might not be considered in formulating a final decision.

ADDRESSES: Comments. Please send two copies of your comments to Dave Bartus, EPA Region 10, 1200 6th Avenue, MS WCM–127, Seattle, WA 98101. Electronic comments can be e-mailed to *bartus.dave@epa.gov.*

Request for Public Hearing. Your request for a hearing must reach EPA by July 30, 2004. The request must contain the information prescribed in section 260.20(d). Any person can request a hearing on this proposed decision by filing a written request with Rick Albright, Director, Office of Air, Waste and Toxics, EPA Region 10, 1200 6th Ave., MS OAR–107, Seattle, WA 98101.

Docket. The RCRA regulatory docket for this proposed rule is maintained by EPA, Region 10. You may examine docket materials at the EPA Region 10 library, 1200 6th Avenue, Seattle, WA 98101, (206) 553–1289, during the hours from 9 a.m. to 4 p.m., Monday through Friday, excluding Federal holidays. Copies of the docket are available for review at the following Hanford Site Public Information Repository locations:

University of Washington, Suzzallo Library, Government Publications Division, Box 352900, Seattle, WA 98195–2900, (206) 543–4664. Contact: Eleanor Chase, *echase@u.washington.edu,* (206) 543–4664.

Gonzaga University, Foley Center, East 502 Boone, Spokane, WA 99258–0001, (509) 323–5806. Contact: Connie Scarppelli, *carter@its.gonzaga.edu.*

Portland State University, Branford Price Millar Library, 934 SW Harrison, Portland, OR 97207–1151, (503) 725–3690. Contact: Michael Bowman, *bowman@lib.pdx.edu.*

U.S. DOE Public Reading Room, Washington State University-TC, CIC Room 101L, 2770 University Drive, Richland, WA 99352, (509) 372–7443. Contact: Janice Parthree, *reading_room@pnl.gov.*

Copies of material in the regulatory docket can be obtained by contacting the Hanford Site Administrative Record via mail, phone, fax, or e-mail:

Address: Hanford Site Administrative Record, PO Box 1000, MSIN H6–08, 2440 Stevens Center Place, Richland, WA 99352, (509) 376–2530. E-mail: *Debra_A_Debbie_Isom@rl.gov.*

FOR FURTHER INFORMATION CONTACT: For technical information concerning this document, contact Dave Bartus, EPA, Region 10, 1200 6th Avenue, MS WCM 127, Seattle, WA 98101, telephone (206) 553–2804, or via e-mail at *bartus.dave@epa.gov.*

SUPPLEMENTARY INFORMATION: The information in this section is organized as follows:

I. Overview Information

A. What Action Is EPA Proposing?

The EPA is proposing a delisting action related to mixed [1] waste managed or generated by the 200 Area ETF on the Hanford Facility in Richland, Washington. The action relates to treated liquid effluents produced by the 200 Area ETF, which were first delisted in June 1995. A description of the wastewater influent to the 200 Area ETF considered in the original delisting, and how the original delisting was developed, may be found in the original proposed rule (60 FR 6054, February 1, 1995). EPA is proposing to modify this existing delisting by increasing the annual quantity of waste delisted to conform to the expected full treatment capacity of the 200 Area ETF and by expanding the list of constituents associated with hazardous waste number F039 (multisource leachate) for which 200 Area ETF treated effluent is delisted, from the current F001 to F005 constituents to all constituents for which F039 waste is listed.[2] This change will allow ETF to fulfill its anticipated future missions, which include treating mixed wastewaters from a number of additional sources beyond 242–A Evaporator process condensate (PC) upon which the original delisting was based. Finally, EPA is proposing to expand the list of hazardous waste numbers for which treated effluent is delisted to include certain wastewater forms of U- and P-listed wastes. In particular, these U- and P-listed waste numbers are those whose chemical constituents are included in the list of hazardous constituents for which F039 was listed (*see* 40 CFR part 261, appendix VII). This latter addition is intended to accommodate possible management of U- and P-listed wastewaters from spill cleanup or decontamination associated with management of these wastes at the Central Waste Complex (CWC) or other storage facilities. These spill cleanup wastes include exactly the same constituents that will eventually contribute to F039 when the source wastes are land disposed, so today's analysis of expanding the 200 Area ETF treated effluent to include F039 applies equally to the wastewater forms of the same chemical constituents in their U- and P-listed waste forms. This action will allow the 200 Area ETF to fulfill an expanded role in supporting Hanford Facility cleanup actions beyond those activities considered in the 1995 delisting rulemaking. Further details of how hazardous waste numbers are applied to 200 Area ETF treated effluent can be found in section II.A of today's proposal. Further details about 200 Area ETF treated effluent and how it is generated can be found in section III.A

The DOE–RL petitioned EPA to exclude (delist) treated liquid effluent from the treatment of liquid mixed waste at the 200 Area ETF because DOE–RL believes that the petitioned waste does not meet the RCRA criteria for which EPA originally listed the petitioned waste. The DOE–RL also believes there are no additional constituents or factors that could cause the waste to be a hazardous waste or warrant retaining the waste as hazardous waste.

Based on our review described in today's proposal, we agree with the petitioner that the identified treated liquid effluents are non-hazardous with respect to the original listing criteria. Furthermore, we find no additional constituents or factors that could cause the waste stream to be a hazardous waste or warrant retaining the waste as a hazardous waste. If our review had found that the waste remained a hazardous waste based on the factors for which the waste originally was listed, or if we found additional constituents or factors that could cause either waste stream to be a hazardous waste or warrant retaining the waste as a hazardous waste we would have proposed to deny the petition. It is important to note that even if the waste becomes delisted, the DOE–RL remains responsible for complying with the Atomic Energy Act (AEA), as the treated effluents will generally remain regulated as low-level radioactive wastes. Further, disposal of the treated liquid effluent on site is regulated by the Washington State Department of Ecology (Ecology) under the authority of WAC 173–216. Further details of how treated effluent will be managed if excluded under today's proposal may be found in section I.C below.

B. Why Is EPA Proposing To Approve These Delistings?

We believe that the petitioned waste should be conditionally delisted because the waste, when managed in accordance with today's proposed conditions, do not meet the criteria for which the wastes originally were listed and the waste do not contain other constituents or factors that could cause the waste stream to be a hazardous waste or warrant retaining the waste as a hazardous waste. Our proposed decision to delist the petitioned waste is based on information submitted by DOE–RL, including the description of the wastewaters managed by the ETF and their original generating sources, the ETF treatment processes, and the analytical data characterizing performance of the 200 Area ETF.

In reviewing this petition, we considered the original listing criteria and the additional factors required by the Hazardous and Solid Waste Amendments (HSWA) of 1984. [*See* 42 U.S.C. 6921(f), and 40 CFR 260.22 (d)(2) through (4)]. These factors included (1) whether the waste are considered acutely toxic; (2) the toxicity of the constituents; (3) the concentration of the constituents in the waste; (4) the tendency of the hazardous constituents to migrate and to bioaccumulate; (5) persistence of the constituents in the environment once released from the waste; (6) plausible and specific types of management of the petitioned waste; (7) the quantity of waste produced; and (8) variability of the waste. We also evaluated the petitioned waste against the listing criteria and factors cited in § 261.11(a)(1), (2) and (3).

C. How Will DOE RL Manage the Petitioned Waste if Delisted?

Treated liquid effluents currently generated by the 200-Area ETF are land disposed at the State Authorized Land

[1] Mixed waste is defined as waste that contains both hazardous waste subject to the requirements of Resource Conservation and Recovery Act (RCRA) of 1976 as amended, and source, special nuclear, or by-product material subject to the requirements of the Atomic Energy Act (AEA) [*See* 42 United States Code (U.S.C.) 6903 (41), added by the Federal Facility Compliance Act (FFCA) of 1992].

[2] Today's proposal is not modifying the list of constituents for which F039 multisource leachate is listed. At the time of the original delisting, DOE–RL did not expect to manage F039 wastes at the 200 Area ETF from sources other than F001–F005 wastes. Therefore, the original 200 Area ETF delisting excluded only F039 wastes from F001–F005 sources.

Disposal Site (SALDS).[3] Treated effluent discussed in today's proposal must be disposed of at SALDS, as a condition of today's proposal. A brief description of the SALDS can be found in the DOE–RL application for the State Waste Discharge Permit ST 4500, and the permit fact sheet available at *http://www.ecy.wa.gov/programs/nwp/pdf/4500dfs.pdf*. EPA's original evaluation of this disposal unit with respect to delisting is found at 60 FR 6061 (February 1, 1995). The DOE–RL's petition for modification of the existing delisting does not reflect any change in design and operation of the SALDS compared to DOE–RL's original delisting petition and EPA's associated analysis. We note that this proposed exclusion is not dependant on the characteristics or protectiveness of effluent disposal at the SALDS. The fact that DOE-RL is not proposing management of excluded treated effluent other than at the SALDS; however, does provide a basis for the EPA to conclude that it is not necessary to consider other risk or exposure pathways in today's proposal beyond those considered in the original delisting rulemaking applicable to treated effluents.

In the November 2001 petition, DOE–RL noted that in the future the delisted treated effluent from 200 Area ETF could be used as makeup water at onsite facilities that have a demand for large quantities of demineralized water. Delisted treated effluent, however, contains appreciable amounts of tritium and must be managed to minimize personnel exposure and the potential for release. EPA encourages DOE–RL to pursue potential alternate uses of 200 Area ETF liquid effluents, and believes that, in general, such practices could prove to be fully protective, and a means to further the Hanford Site cleanup mission. Because no specific proposals have been made by DOE–RL, however, EPA lacks information to specifically evaluate impacts of such reuse practices with respect to delisting criteria, or whether such practice would identify other factors that would need to be considered in a delisting decision. Today's proposed rulemaking is based on continued disposal of treated effluents at the SALDS, but does include a provision whereby DOE–RL could request EPA to evaluate treated liquid effluent reuse proposals. If EPA finds, through this review, that delisting conditions in place at the time of the request ensure that the treated effluent is managed protectively with respect to delisting criteria, EPA may allow DOE–RL to commence the proposed activity without changes to the delisting rule. Otherwise, EPA could require the DOE–RL to submit a revised delisting petition, and new delisting conditions would need to be established to reflect the new proposed disposal/use activity.[4]

D. When Would EPA Finalize the Proposed Delisting Exclusions?

RCRA section 3001(f), 42 U.S.C. 6921(f), specifically requires the EPA to provide notice and an opportunity for comment before granting or denying a final exclusion. Thus, EPA will not make a final decision to grant an exclusion until the EPA has addressed all timely public comments (including any at public hearings) on today's proposal.

RCRA section 3010(b)(1), 42 U.S.C. 6930(b)(1), allows rules to become effective in less than six months when the regulated community does not need the six-month period to come into compliance with the new regulatory requirements. EPA believes that today's proposed exclusion, if finalized, would reduce existing regulatory requirements, so that a six-month period is not necessary for DOE–RL to come into compliance. As a result, EPA believes that, if finalized, today's proposal should be effective immediately upon final publication. A later date would impose unnecessary hardship and expense on the petitioner. *See also* section II.B for a discussion of today's proposal on State regulatory programs.

II. Background

A. What Laws and Regulations Give EPA the Authority To Delist Wastes?

On January 16, 1981, as part of the final and interim final regulations implementing section 3001 of RCRA, EPA published an amended list of hazardous wastes from non-specific and specific sources. EPA has amended this list several times. *See* 40 CFR 261.31 and 261.32. EPA lists these wastes as hazardous because (1) the wastes exhibit one or more of the characteristics of hazardous wastes identified in subpart C of part 261 (that is, ignitability, corrosivity, reactivity, and toxicity) or (2) the wastes meet the criteria for listing contained in § 261.11(a)(2) or (a)(3).

Individual waste streams could vary depending on raw materials, industrial processes, and other factors. Thus, while a waste that is described in these regulations generally is hazardous, a specific waste from an individual facility meeting the listing description might not be hazardous.

For this reason, 40 CFR 260.20 and 260.22 provide an exclusion procedure, allowing persons to demonstrate that a specific waste from a particular generating facility [5] should not be regulated as a hazardous waste.

To have their waste excluded, petitioners first must show that the waste generated at their facilities does not meet any of the criteria for which the waste was listed. *See* 40 CFR 260.22(a) and the background documents for the listed waste. Second, the EPA Administrator must determine, where the Administrator has a reasonable basis to believe that factors (including additional constituents) other than those for which the waste was listed could cause the waste to be hazardous waste, that such factors do not warrant retaining the waste as hazardous waste. Accordingly, a petitioner also must demonstrate that the waste does not exhibit any of the hazardous waste characteristics (*i.e.*, ignitability, reactivity, corrosivity, and toxicity), and must present sufficient information for the EPA to determine whether the waste contains any other toxic constituents at hazardous levels. *See* 40 CFR 260.22(a), 42 U.S.C. 6921(f), and the background documents for the listed waste. Although waste that is ''delisted'' (*i.e.*, excluded) has been evaluated to determine whether or not the waste exhibits any of the characteristics of hazardous waste, generators remain obligated under RCRA to determine whether or not their waste continues to be non-hazardous based on the hazardous waste characteristics (including characteristics

[3] The SALDS disposal site is an effluent infiltration gallery, consisting of a 116 foot by 200 foot rectangular drainfield with 4 inch porous pipe laterals coming off an 8 inch diameter header at 6 foot intervals. The drainfield pipes are 6 inches below the surface of a 6 foot deep gravel basin. The gravel basin is covered by a layer of native soil at least 12 inches deep. *See http://www.ecy.wa.gov/programs/nwp/pdf/4500dfs.pdf*. For purposes of developing delisting exclusion limits in the original 200 Area ETF exclusion and in today's proposal, EPA considers the SALDS unit to be functionally equivalent to an unlined surface impoundment, consistent with existing EPA delisting guidance and the existing 200 Area ETF delisting..

[4] As noted elsewhere in this proposal, delisting requirements that could be established as a result of this proposal are not effective under RCRA in States that have final authorization for delisting exclusion petition (40 CFR 260.22).

[5] Although no one produces hazardous waste without reason, many industrial processes result in the production of hazardous waste, as well as useful products and services. A ''generating facility'' is a facility in which hazardous waste is produced, and a ''generator'' is a person who produces hazardous waste or causes hazardous waste to be produced at a particular place. 40 CFR 260.10 provides regulatory definitions of ''generator'', ''facility'', ''person'', and other terms related to hazardous waste, and 40 CFR part 262 provides regulatory requirements for generators.

that might be promulgated subsequent to a delisting decision).

In addition, residues from the treatment, storage, or disposal of listed hazardous waste and mixtures containing listed hazardous waste also are considered hazardous waste. *See* 40 CFR 261.3(a)(2)(iv) and (c)(2)(i), referred to as the ''mixture'' and ''derived-from'' rules, respectively. Such waste also is eligible for exclusion but remains hazardous waste until excluded.

On October 10, 1995, the EPA Administrator delegated to the EPA Regional Administrators the authority to evaluate and approve or deny petitions submitted by generators in accordance with 40 CFR 260.20 and 260.22 within their Regions (*See* EPA Delegations Manual, Delegation 8–19) in States not yet authorized to administer a delisting program in lieu of the Federal program.

B. How Would This Action Affect the States?

This proposed rule, if promulgated, would be issued under the Federal (RCRA) delisting authority found at 40 CFR 260.22. Some States are authorized to administer a delisting program in lieu of the Federal program, *i.e.*, to make their own delisting decisions. Therefore, this proposed exclusion, if promulgated, would not apply under RCRA in those authorized States. For States not authorized to administer a delisting program in lieu of the Federal program (as is the case with the State of Washington as of the date of today's proposal), today's proposal, if promulgated, would become effective with respect to the Federal (RCRA) program. DOE–RL would, however, have to comply with additional applicable State requirements.

States are allowed to impose regulatory requirements that are more stringent than EPA's, pursuant to section 3009 of RCRA. These more stringent requirements may include a provision that prohibits a federally issued exclusion from taking effect in a State. Because a petitioner's waste may be regulated under a dual system (*i.e.*, both Federal and State programs), petitioners are urged to contact State regulatory authorities to determine the current status of their wastes under the State laws.

III. EPA's Evaluation of the Waste Information and Data for Liquid Effluent Waste

A. What Waste Did DOE RL Petition EPA To Delist and How Is the Waste Generated?

The original delisting action considered treatment of only one waste stream, process condensate from the 242–A Evaporator (242–A Evaporator PC). Since promulgation of the original delisting, the operating mission of the 200 Area ETF has expanded considerably. Currently, the operating capacity of the 200 Area ETF provides treatment of 242–A Evaporator PC, treatment of Hanford Site contaminated groundwater from various pump-and-treat systems, and a variety of other wastewaters generated from waste management and cleanup activities at Hanford.

As discussed in section 3.0 of DOE–RL's November 2001 petition, the mission of the 200 Area ETF is to treat wastewater generated on the Hanford Facility from cleanup activities including multisource leachate from operation of hazardous/mixed waste landfills, and other hazardous wastewaters from a variety of sources including analytical laboratory operations, research and development studies, waste treatment processes, environmental restoration and deactivation projects, and other waste management activities. Based on this change in the 200 Area ETF mission, the DOE–RL has petitioned EPA to modify the existing delisting applicable to treated liquid effluent from the 200 Area ETF by increasing the effluent volume limit to 210 million liters per year, and to conditionally exclude treated effluents from treatment by the 200 Area ETF of certain liquid Hanford wastes with hazardous waste numbers identified at 40 CFR 261.31 and 261.33 as F001–F005, F039, and all U- and P-listed substances appearing in the listing definition of F039. Under the current delisting, the liquid effluent volume is limited to approximately 86 million liters per year, and delisted only for F001–F005 waste numbers and F039 constituents from F001 through F005 waste numbers.

The November 2001 delisting petition explains that wastes bearing numbers P029, P030, P098, P106, P120, and U123, as well as other U- and P-listed numbers corresponding to F039 constituents, are currently managed, or may be managed in the future, as part of Hanford cleanup operations. Wastes bearing these waste numbers are intended for future disposal in the mixed waste landfill (Low-Level Burial Grounds (LLBG)). These wastes, therefore, eventually will contribute to generation of F039 multisource leachate from this unit, and are specifically considered in the analysis of F039 constituents in DOE–RL's delisting proposal (refer to Appendix B of the November 2001 delisting petition). The DOE–RL believes that wastewaters bearing these waste numbers could be generated from activities such as spill cleanup or equipment decontamination, and such wastewaters could be managed best at the 200 Area ETF. The DOE–RL is not proposing to manage the discarded commercial chemical products in the 200 Area ETF, but only wastewaters from spill cleanup or equipment decontamination. EPA believes that this is a reasonable approach, and is proposing to include these U- and P-listed numbers in today's proposed exclusion.

To ensure that the commercial chemical compounds themselves are not inappropriately managed at the 200 Area ETF, EPA is proposing as a condition of the proposed exclusion for these wastes that the 200 Area ETF may manage only influent wastewaters bearing less than 1.0 weight percent of any hazardous constituent. These wastewaters would also would bear the same U- and P-listed numbers by virtue of the ''derived from'' rule discussed above in section I.A. Because the hazardous constituents from these U- and P-listed wastes are already included in the analysis of 200 Area ETF performance for treatment of F039, EPA is not proposing any separate analysis specific to U- and P-listed numbers. EPA's proposal to include these U- and P-listed waste numbers in today's proposed action is intended to include influent wastewaters that might be generated from management of wastes currently stored in CWC, as well as such wastes managed elsewhere at Hanford or which may be generated in the future.

In theory, the provision of today's proposal dealing with U- and P-listed waste numbers could include all 213 constituents included in the regulatory definition of F039. In practice, EPA expects that the actual number of U- and P-listed constituents that might actually be managed under this provision will be significantly less for two reasons. First, not all F039 constituents have corresponding U- or P-listed waste numbers. Second, it is highly unlikely that most, or even many, of the U- and P-listed waste numbers considered by this provision would ever enter the influent wastewaters managed by ETF. In any case, EPA believes that today's proposal is fully protective and demonstrates compliance with delisting criteria regardless of the number of U- and P-listed waste numbers that actually end up contributing to wastewaters managed by ETF.

Beginning in 2007, DOE–RL expects to begin processing liquid effluents (wastewaters) from the Waste Treatment Plant (WTP), which currently is being designed and constructed to treat high-

level mixed waste stored in 177 underground storage tanks. At this time, a complete, detailed characterization of WTP liquid effluents is not available. Should this waste stream fit within the conditions of today's proposal, then the WTP effluents could be managed under this delisting action, if finalized. Should WTP effluents require significant reconfiguration of the 200 Area ETF system to be treated successfully or be outside the waste volume limitations or treatability envelope, or otherwise fail to meet the requirements of today's proposal, the DOE–RL could not manage either the treated effluent or concentrated wastes resulting from processing of WTP effluents as excluded wastes. In this instance, the DOE–RL would need to seek a further modification of the delisting rulemaking.

Given the lack of characterization data for future WTP effluents, EPA specifically is not considering this waste stream in its analysis of the proposed delisting action, other than to acknowledge that the DOE–RL might manage WTP effluents in the 200 Area ETF, provided the applicable delisting criteria and verification sampling requirements are met. EPA anticipates that it might be necessary to further modify the treated effluent delisting rule once WTP effluents are fully characterized.

B. What Information and Analyses Did DOE RL Submit To Support These Petitions?

The DOE–RL has provided a general description of the various waste streams that the 200 Area ETF expects to manage in addition to 242–A Evaporator PC and other waste streams currently being treated. This information is found in section 3.0 of the November 2001 delisting petition. Some of these waste streams have not yet been generated. As a result, these waste streams cannot be fully characterized at this time, nor can surrogate wastewaters be developed as was done as part of pilot testing associated with the original delisting action. The DOE–RL's request to modify the original delisting is based on extending the original process model, which has been validated through operating history, to these anticipated future waste streams. EPA is proposing that treated liquid effluent from these new influent waste streams be conditionally managed as excluded waste provided that the DOE–RL demonstrates prior to 200 Area ETF processing that delisting criteria can be met through application of the 200 Area ETF process model. All treated effluent, including treated effluent from processing of new influent waste streams that do not have an operating history of being managed at the 200 Area ETF, will be subject to a verification sampling requirement similar to that in the original delisting action for 242–A Evaporator PC. As with the original delisting action, all treated effluent will be subject to routine, periodic verification sampling. (*See* section III.N for a discussion of the applicability of LDR treatment requirements.)

The DOE–RL has submitted substantial data comparing actual operating performance of the 200 Area ETF to predicted treatment efficiency developed through pilot plant testing. These data consistently validate the pilot plant model developed in support of the original delisting, and indicate that for 242–A Evaporator PC processed to date, treatment efficiency is well in excess of that predicted by the process model. These data are presented in Table A–1 of the November 2001 delisting petition. The EPA believes that these data confirm that the 200 Area ETF is a robust treatment system well equipped to provide treatment necessary to meet delisting criteria for the wide range of new waste streams considered in this revised delisting action.

Detailed characterization data are not available for many non-process condensate waste streams that the DOE–RL proposes for consideration under this delisting action. Therefore, the DOE–RL has proposed a detailed waste acceptance process that allows this analysis to be conducted in conjunction with the 200 Area ETF waste acceptance process required by the Hanford Facility RCRA Permit WA7 89000 8967 and the State Waste Discharge Permit (ST4500) for the SALDS. Particulars of the waste acceptance process with respect to this proposed delisting action can be found in section 2.2 of the November 2001 delisting petition. In addition, Ecology provided technical assistance to the EPA on this matter by reviewing DOE–RL's 200 Area ETF waste acceptance process, including permit-required quality assurance plans (QAPs). EPA has reviewed and concurs with Ecology's technical conclusions that the waste profiling and acceptance process at the 200 Area ETF is sufficient to support delisting of the resulting treated effluents.

Briefly, this waste acceptance process is intended to accomplish the following:

- Establish operating conditions and operating configuration of the 200 Area ETF;
- Ensure contaminant concentrations do not interfere with or foul 200 Area ETF treatment processes (*e.g.*, interfere with ultraviolet oxidation (UV/OX) destruction, foul reverse osmosis (RO) membranes, etc.);
- Ensure compatibility with 200 Area ETF materials of construction and other influent wastewaters;
- Ensure treated effluents meet delisting criteria and SALDS waste discharge permit requirements;
- Estimate concentrations of constituents in the secondary treatment train and in concentrated waste (a discussion of EPA's proposed delisting of concentrated wastes follows);
- Ensure compliance with Hanford Facility RCRA Permit waste acceptance requirements.

Based on waste profile information provided by wastewater generators, the DOE–RL would compare constituent concentrations to ensure that the influent falls within the 200 Area ETF treatability envelope. The ETF treatability envelope is defined as the maximum untreated waste concentrations that the 200 Area ETF is capable of managing to meet treated effluent delisting criteria. The treatability envelope concept is essentially the same approach used by the EPA in evaluating treatability data provided by the DOE–RL in support of the original delisting petition, with modifications to account for operating history.

In some instances, wastewaters are accepted directly into the 200 Area ETF for treatment, while other wastewaters are accepted into the Liquid Effluent Retention Facility (LERF) basins.[6] Waste acceptance evaluations for wastewaters managed in LERF basins account for compatibility with basin materials in addition to treatability envelope considerations. For wastewaters accepted into LERF basins, treatability envelope evaluation reflect the commingled wastewater stream. Wastewaters are required to undergo periodic re-valuation under the site-wide permit waste analysis plan.

The DOE–RL's petition for modifying the existing treated effluent delisting is based on establishing a waste processing strategy for each waste stream. Each time a new wastewater is managed in the 200 Area ETF, a document must be prepared containing the waste processing strategy to reflect specific

[6] Information concerning management of influent wastewaters is provided for background and informational purposes only. Whether influent wastewaters are received directly by the 200 Area ETF directly or via management in the LERF basins is generally an operational decision distinct from the question of whether the wastewaters are acceptable candidates for management under today's proposed delisting.

waste constituents and to ensure that the treated effluent meets delisting criteria. The waste processing strategy consists of the processing configuration of the various treatment technologies available at the 200 Area ETF and the operating conditions of each. Examples of operating conditions include UV/OX residence time, RO reject rate, etc. Wastewaters that fit within the treatability envelope for a particular processing strategy can be processed directly, subject only to the periodic re-evaluation of each waste stream with respect to waste acceptance criteria required by the Hanford site-wide RCRA permit, and periodic verification of the treated effluent with respect to delisting requirements. Wastewaters for which a new processing strategy is developed where no operating history has been accumulated must undergo initial verification sampling similar to that required by the original delisting action. EPA believes that this scheme of establishing waste acceptance and processing strategy on a verified process model, coupled with initial and periodic on-going verification, provides certainty that delisting criteria will be met, reflecting data that validate the original process model, and the redundancy of verification testing, and is consistent with the delisting framework established in the original delisting action. In addition, it provides flexibility needed for the 200 Area ETF to fulfill its key role in Hanford Site cleanup activities.

C. How Did EPA Evaluate the Risk of Delisting This Waste?

For EPA to delist a particular waste, the petitioner must demonstrate that the waste does not meet any of the criteria under which the waste was listed, and that the waste does not exhibit any of the hazardous waste characteristics defined in 40 CFR 261.21 through 261.24. In addition, based on a complete application, EPA must determine where it has a reasonable basis to believe that factors (including additional constituents) exist other than those for which the waste was listed that could cause the waste to be a hazardous waste. If such factors exist, EPA must determine that such factors do not warrant retaining the waste as a hazardous waste. For petitioned waste that contains detectable chemical constituents, EPA generally makes this determination by gathering information to identify plausible routes of human or environmental exposure (*i.e.*, groundwater, surface water, air) and using fate and transport models to predict the release of hazardous constituents from the petitioned waste once the waste is disposed. The transport model predicts potential exposures and impacts of the petitioned waste on human health and the environment.

As discussed in the original delisting proposal (60 FR 6054, February 1, 1995), EPA used a modified version of the Environmental Protection Agency Composite Membrane Liner (EPACML) model based on disposal of waste in a surface impoundment to establish delisting levels for treated 200 Area ETF effluent. The original delisting proposal included a discussion of plausible exposure routes and an analysis of how these potential exposure routes influenced EPA's selection of delisting criteria, as well as a detailed discussion of how delisting levels were calculated from model outputs and toxicological data.

In analyzing the DOE–RL's current delisting petition, EPA does not believe that there is a substantial basis for choosing a different approach to evaluating the risks of delisting this waste or for establishing revised delisting criteria. In reaching this conclusion, we considered several factors:

- No changes in waste disposal practices. The DOE–RL currently manages 200 Area ETF treated effluents in the same manner as considered by EPA in the original delisting analysis, and DOE–RL's revised delisting petition does not propose any changes in these waste disposal practices. Therefore, we do not find any basis for any different analysis of potential exposure pathways or modeling compared to the original delisting analysis.
- 200 Area ETF treatment technology. Current 200 Area ETF processing technologies and configurations remain unchanged from the proposed design considered in EPA's original upfront delisting analysis. Further, the 200 Area ETF operating history confirms the treatment efficiencies and performance predicted by pilot plant testing and considered by EPA in the original delisting analysis. Therefore, we do not find any basis for alternate evaluation methodologies based on the treatment capabilities of the 200 Area ETF.
- Wastes managed by the 200 Area ETF. Although the original delisting analysis considered only PC from the 242–A Evaporator, this waste stream is quite complex, and is characterized by a wide range of chemical constituents and classes of compounds from diverse wastes in the Hanford Facility double shell tank system. Specifically with respect to organic constituents and the treatment efficacy of ultraviolet oxidation (UV/OX), the original delisting analysis was based on treatment efficiency for groups or classes of organic compounds. Although today's proposal considers additional chemical compounds that might be present in F039 multisource leachate from wastes other than F001 through F005, EPA believes that these additional constituents can be analyzed effectively using the original methodology. Further, EPA does not believe that any of the additional constituents considered in this delisting proposal pose treatability or risk questions that suggest the original chemical group approach to analyzing delisting risks and establishing delisting levels needs to be re-evaluated. A more specific discussion of how treatability groups and delisting levels are established, considering the additional waste streams and waste numbers to be managed by the 200 Area ETF under this proposed delisting, can be found in section 4.1.1 of the November 2001 delisting petition.

EPA also has examined the performance record of discharges of treated effluents from the 200 Area ETF under State Waste Discharge Permit No. ST4500. This permit, issued under the authority of chapter 90.48 of the Revised Code of Washington, as amended, requires monitoring of treated effluent and of groundwater affected by the SALDS. There are three elements to the ST4500 Permit monitoring requirements. These are: (1) Maximum effluent limitations; (2) ''early warning'' effluent limitations that provide an early warning that groundwater limitations are being approached in the effluent; and (3) groundwater limits. Each of these elements are described below:

- ST4500 Permit effluent monthly average—the highest allowable average of daily discharges over a calendar month, calculated as the sum of all daily discharges measured during a calendar month divided by the number of daily discharges measured during that month.
- Groundwater limit—maximum constituent concentration allowed in groundwater at monitoring well specified in the ST4500 Permit.
- Groundwater early warning limit—constituent concentration in groundwater that triggers early warning reporting requirements. Exceeding an early warning value does not constitute a violation of ST4500 Permit requirements.

These limits, including a comparison to proposed delisting levels (section D), are shown in the following table. All values are mg/L. The first three columns correspond to the ST4500 permit monitoring requirements described above, while the remaining columns contain the following information:

• Proposed delisting treatability group—class of similar chemical constituents as defined in Table 4–1 of the November 29, 2001 delisting petition.

• Proposed delisting level—constituent concentration limit for treated effluent in today's proposal.

• Comments—self-explanatory.

Constituent	ST 4500 permit effluent monthly average	Groundwater limit	Effluent groundwater early warning	Proposed delisting treatability group	Proposed delisting level	Comments
Acetone	N/A	0.16	N/A	19	2.4	
Acetophenone	0.01	N/A	N/A	19	N/A	
Benzene	N/A	0.005	0.005	3	0.06	
Carbon Tetrachloride	0.005	N/A	N/A	13	0.018	
Chloroform	N/A	0.062	0.005	13	N/A	
n-Nitrosodimethylamine	0.02	N/A	N/A	10e	0.02	Proposed delisting limit based on PQL.
Tetrachloroethylene	0.005	N/A	N/A	14	N/A	
Tetrahydrofuran	N/A	0.1	0.1	18a	0.56	
Total Organic Carbon (TOC)	1.1	N/A	N/A	N/A	N/A	
Arsenic	0.015	N/A	N/A	22	0.015	
Beryllium	0.04	N/A	N/A	21	0.045	
Cadmium	N/A	0.01	0.0075	22	0.011	
Chromium	0.02	N/A	N/A	22	0.068	
Copper	N/A	0.07	0.07	N/A	N/A	
Lead	N/A	0.05	0.038	22	0.09	
Mercury	N/A	0.002	0.002	22	0.0068	
Ammonia	0.83	N/A	N/A	24	6	
Chloride	N/A	N/A	N/A	N/A	N/A	
Nitrate	N/A	N/A	N/A	N/A	N/A	
Nitrite	N/A	N/A	N/A	N/A	N/A	
Sulfate	N/A	250	N/A	N/A	N/A	
Total Dissolved Solids	N/A	500	380	N/A	N/A	

PQL = practical quantitation limit.

N/A = not applicable. The set of constituents with reporting or enforceable limits established in the ST 4500 permit and in today's proposal are not identical. N/A table entries correspond to constituents included in the ST 4500 permit but not as constituents representative of a treatability group or vice versa.

To date, the DOE–RL has not reported any exceedences of any of the three monitoring criterion established by the ST4500 Permit. According to the Ecology fact sheet issued in conjunction with the latest reissue of the ST4500 Permit:

''During the history of the previous permit, the Permittee has remained in compliance based on Discharge Monitoring Reports (DMRs) and other reports submitted to Ecology and inspections conducted by Ecology.'' The only exceptions have been a few early high groundwater levels of sulfate. The sulfate levels were not due to the discharge of sulfate, but rather by the clean effluent dissolving sulfate that exists in the vadose zone. The sulfate levels peaked for about a year, always below groundwater standards, and have since returned to background levels.

Given that all of these ST4500 Permit wastewater discharge limits are at or below corresponding delisting levels, EPA concludes that the 200 Area ETF performs at least as well as the proposed delisting levels. This conclusion supports EPA's belief that 200 Area ETF processing model is well validated, and can be appropriately used to predict performance of 200 Area ETF for treatment of new waste streams for which actually operating data is not yet available. Further, these data show 200 Area ETF discharges to SALDS are not having a significant impact on groundwater. EPA therefore concludes that further analysis of groundwater monitoring data is not necessary in the context of the proposed delisting revisions.

D. What Delisting Levels Are EPA Proposing?

EPA is proposing to conditionally exclude treated effluents by establishing a set of verification constituents and concentrations that must be met as a condition of the exclusion. These concentrations are referred to as delisting levels. The process of selecting delisting levels and proposed verification constituents is similar to that used in the existing 200 Area ETF exclusion where constituents that are representative of a treatability group were selected as verification parameters.

Treatability groups established in today's proposal can be found in Table 4–1 of the November 29, 2001 delisting petition. Treatability groups have been established by grouping chemicals identified as 200 Area Effluent Treatment Facility Consolidated Constituents in Table B–1 of the November 29, 2001 delisting petition according to similar chemical structure and function. For example, all organic constituents with phthalate structure are grouped into treatability group 8. Inorganic constituents (metals in particular) are each assigned to their own treatability group. One difference in the process for selecting constituents representing each organic treatability group between the original delisting and today's proposal is that one constituent is selected and proposed to represent a treatability group. For inorganic treatability groups, each constituent is in a separate treatability group.

Because the initial delisting was an upfront delisting,[7] multiple constituents were selected for a few treatability groups. The initial delisting focused exclusively on listed wastewaters with a designation of F001 to F005, or F039 derived from F001 to F005, and the verification parameters included multiple constituents in several treatability groups. Because this

[7] An upfront delisting is an exclusion granted for a waste stream prior to full-scale commercial generation or treatment of the waste stream. In contrast, a traditional exclusion applies to an existing waste stream that can be fully characterized on a commercial scale.

delisting modification expands the constituents associated with the F039 waste number being delisted, the proposed verification constituents need to represent all the treatability groups. EPA's analysis of data presented in the DOE–RL's petition indicate that the data verify the process model used in the original delisting action. Further, EPA concludes the treatment performance necessary to meet delisting exclusion limits will be successfully demonstrated by the individual constituents proposed to represent each treatability group. Since these representative constituents have been selected after consideration of both toxicity and how difficult each constituent is to treat, EPA concludes that requiring multiple constituents to represent each treatability group would not provide greater assurance that exclusion limits are met for all constituents in the treatability group.

The constituents and the delisting levels for monitoring are determined in a three-phase approach. First, the health-based levels (HBLs)[8] are calculated based on toxicological data for each constituent of concern identified in Table B–1 of the November 2001 delisting petition. The HBLs are calculated using current toxicological data from IRIS, HEAST, and NCEA.[9] The target risk factor of 1.0×10^{-5} excess cancer risk is used with the oral slope factor to calculate a HBL for carcinogens. The target hazard quotient factor of 0.10 is used with the reference dose for oral exposure to calculate a HBL for non-carcinogens. When an oral slope factor and a reference dose for oral exposure are both available, the minimum (more conservative) resulting HBL is used. The groundwater ingestion pathway was the only pathway considered, based on the same rationale used to select the groundwater pathway in the initial delisting exclusion, found in 40 CFR part 261, appendix IX.

Second, a constituent is selected from a treatability group to represent the entire group. This methodology uses HBLs (the lower the HBL the higher the constituent toxicity), the electrical energy/order (EE/O), which is a measure of the UV/OX treatment efficiency for a constituent (the higher the EE/O the more difficult it is to destroy a constituent), and the practical quantitation limit (PQL). Constituents are ranked by the HBL and by the EE/O. HBLs within a factor of 10 are considered identical for this selection process because HBLs of constituents within most treatability groups range over a number of orders of magnitude. Each treatability group is evaluated individually. The constituents having the lowest HBL and the highest EE/O are the first candidates considered for selection. To ensure that acceptable analytical data can be obtained, the PQL is considered. If the PQL is higher than the delisting level (HBL times the dilution attenuation factor [DAF]),[10] then another constituent is evaluated.

Finally, the proposed delisting levels are based on the HBL times the DAF of 6. The methodology used by DOE–RL to calculate this DAF appears in section 4.0 of the November 2001 delisting petition. EPA has previously determined that the methodology used by DOE–RL in establishing the DAF of 6 is protective in a previous delisting. *See* 56 FR 32993, July 18, 1991. In a few cases, the delisting level is based on either the PQL, maximum contamination limit (MCL), or a concentration level derived from requirements of the Toxic Substance Control Act (TSCA) applicable to polychlorinated biphenyls (PCB) remediation waste, which EPA has determined to be protective of unrestricted exposure. EPA is proposing to establish delisting exclusion limits for PCBs based on TSCA values as a means to achieve consistency between RCRA and TSCA requirements applicable to treated effluent. *See* section III.N for a discussion of the relationship between delisting levels in today's proposal and LDR treatment requirements.

There are a number of constituents of concern in treated effluent where toxicological data are inconclusive or lacking. For treatability groups where these constituents are grouped, toxicological data for the constituent representing the treatability group is selected from one of the remaining treatability group constituents for which conclusive toxicological data are available. Stated another way, constituents representing each treatability group are selected based on a combination of available health-based data, difficulty to treat the constituent, and availability of acceptable analytical information. EPA believes that the methodology established in the original 200 Area ETF delisting and adopted as the basis for today's proposal provides certainty that when delisting criteria for representative constituents are met, all constituents in the same treatability group satisfy delisting requirements.

The methodology described in the previous paragraph for selecting constituents to represent each treatability group also supports EPA's proposal to have a single chemical constituent represent each treatability group. As noted above, each constituent representing a treatability group is selected on the basis of a combination of being difficult to treat and of being the most toxic. Provided the ETF waste processing strategy successfully demonstrates that the selected represented constituent meets delisting limits (as required as a condition of today's proposal), any other constituent in the same treatability group would either be less toxic, or be more completely destroyed or removed from the treated effluent than the representative constituent. In either instance, the selected representative constituent will always be the limiting factor within each treatability group with respect to meeting the requirements to exclude a particular waste.

The following are exceptions to this methodology.

- Group 2: Diethylstilbestrol, also called estrogen, was not selected because of analytical measurement difficulties and this constituent is highly unlikely to be in wastewater treated at the 200 Area ETF.
- Group 9a: 1-Butanol was chosen over propargyl alcohol because 1-butanol is expected to be more prevalent in wastewaters treated at the 200 Area ETF. Should treatment efficiency of the 200 Area ETF be limited by this treatability group, the greater prevalence of 1-butanol increases the likelihood that this treatment limitation would be identified by the verification sampling program. In other words, a constituent that is rarely found even in wastes prior to treatment would not be a good indicator of whether or not effective treatment has occurred, since such a constituent would not be expected to be found in treated effluent even after ineffective treatment.
- Group 10a: All constituents containing hydrazine were eliminated from selection because of their reactivity under strong oxidizing conditions

[8] Health-based levels are considered the cancer slope factor for carcinogens, and the reference dose for constituents with non-cancer health effects.

[9] The Integrated Risk Information System (IRIS) can be found at *http://www.epa.gov/iris*. The Health Effects Assessment Summary Tables (HEAST) can be found at ''Health Effects Assessment Summary Tables FY 1997 Update,'' 9200.6–303(97–1), EPA 540/R–97–036, PB97–921199, July 199. Data from the National Center for Environmental Assessment (NCEA) may be found at *http://www.cfpub.epa.gov/ncea*.

[10] A dilution/attenuation factor is a measure of fate and transport effects on constituents as they migrate from a source area to a receptor. In this instance, the source area is the SALDS unit, modeled as an unlined surface impoundment and the receptor is a hypothetical individual ingesting groundwater affected by the waste source). Details of how the EPACML model was used to calculate DAF values for the 200 Area ETF may be found in the original delisting proposal, 60 FR 6054, February 1, 1995.

present in the UV/OX system at the 200 Area ETF. Because these constituents react so quickly in the conditions occurring in the UV/OX system, they do not provide appropriate measures of effective treatment for this treatability group.

• Group 10e: N-Nitrosodimethylamine was chosen. Because of analytical measurement difficulties, the delisting level is the PQL.

• Group 12: The delisting level for PCBs is based on the TSCA limit of 0.0005 mg/L (0.5 ppb). This level is where treated remediation waste is authorized for unrestricted use.[11]

• Group 17, 17a: The aldehyde group, in general, is reactive in water, which makes these constituents unlikely to be in wastewaters treated at the 200 Area ETF. Also, the reactivity of aldehydes causes analytical problems where these are difficult to analyze in the laboratory. The aldehyde group will be represented by treatability Group 13, the group that is most difficult to destroy.

• Group 19: Acetone was chosen over acetophenone because acetone is expected to be a more prevalent contaminant in wastewaters treated at the 200 Area ETF.

• Group 22, 21: The delisting level for arsenic is based on the PQL rather than the HBL. The delisting level for lead is based on the MCL for drinking water rather than a level based on toxicity.

• Group 25: This group includes group 25a and 25b. Tributyl phosphate was chosen from this group as tributyl phosphate is expected to be more prevalent in wastewaters treated at the 200 Area ETF.

EPA has not specifically evaluated environmental receptors in the original delisting or today's proposal because the proposed management scenario for excluded wastes is specifically intended to preclude exposure for an extended period of time during natural decay of radioactive tritium (tritium is technically impracticable to treat or remove from the 200 Area ETF effluent). To ensure treated effluent is not managed in a manner that might create environmental exposures, the EPA is proposing to limit management of treated effluent to the SALDS disposal unit.

Based on this methodology, Table 1 provides a list of proposed delisting constituents and delisting levels.

TABLE 1.—PROPOSED DELISTING CONSTITUENTS AND DELISTING LEVELS FOR TREATED EFFLUENT

Treatability group	Proposed delisting constituents	CAS #	HBL (mg/L)	EE/O	Justification	Proposed delisting level (mg/L)
1	Cresol [Cresylic acid]*	1319–77–3	2.0×10^{-11}	10	Representing group, has relatively low HBL and highest EE/O of group, target compound in SW–846 method(4), PQL less than delisting level.	1.2
2	2,4,6-trichlorophenol	88–06–2	6.0×10^{-2}	10	Representing group, has a low HBL and is a hard to destroy compound, target compound in SW–846 method, PQL less than delisting level.	3.6×10^{-1}
3, 15, 15a	Benzene*	71–43–2	1.0×10^{-2}	3	Representing group, the compound with the lowest HBL, target compound in SW–846 method, PQL less than delisting level.	6.0×10^{-2}
4	Chrysene	218–01–9	9.0×10^{-2}	10	Representing group, has a relatively low HBL and is one of the hard to destroy compounds, target compound in SW–846 method, PQL less than delisting level. Chrysene was chosen because the other constituents with lower HBLs have analytical measurement difficulties.	5.6×10^{-1}
5, 5a, 16	Hexachlorobenzene	118–74–1	4.0×10^{-4}	10	Representing group, has a relatively low HBL and is one of the hard to destroy compounds, target compound in SW–846 method, PQL less than delisting level. Hexachlorobenzene was chosen because Heptachlorodibenzofuran and Heptachlorodibenzo-p-dioxins have analytical measurement difficulties.	2.0×10^{-3}
6b, 14	Hexachlorocyclopentadiene	77–47–4	3.0×10^{-2}	10	Representing group, has a low HBL and is a hard to destroy compound, target compound in SW–846 method, PQL less than delisting level. Hexachlorocyclopentadiene was chosen over 1,4-Dichloro-2-butene and Hexachlorobutadiene because of analytical measurement difficulties, and over 1,1-Dichloroethylene and Vinyl chloride because of a higher EE/O.	1.8×10^{-1}

[11] In establishing a delisting limit based on the TSCA unrestricted use limit of 0.5 parts per billion for liquid remediation wastes, EPA is not necessarily representing that wastewaters managed by the 200 Area ETF are necessarily TSCA remediation wastes. Rather, EPA is simply ''borrowing'' a technical standard developed for PCBs and applying it in a RCRA exclusion rulemaking.

TABLE 1.—PROPOSED DELISTING CONSTITUENTS AND DELISTING LEVELS FOR TREATED EFFLUENT—Continued

Treatability group	Proposed delisting constituents	CAS #	HBL (mg/L)	EE/O	Justification	Proposed delisting level (mg/L)
7a	Dichloroisopropyl ether [Bis(2-Chloroisopropyl) ether].	108–60–1	1.0×10^{-3}	15	Representing group 7a and 7b, has a relatively low HBL and the EE/O is highest of group, target compound in SW–846 method, PQL less than delisting level. Dichloroisopropyl ether was chosen over Bis(2-Chloroethyl) ether and Dichloromethyl ether because of a higher EE/O.	6.0×10^{-2}
8	Di-n-octylphthalate*	117–84–0	8.0×10^{-2}	15	Representing group, has a relatively low HBL and the EE/O is highest of group, target compound in SW–846 method, PQL less than delisting level.	4.8×10^{-1}
9a	1-Butanol*	71–36–3	4×10^{-1}	10	Representing group, the compound with the lowest HBL, target compound in SW–846 method, PQL less than delisting level.	2.4
9	Isophorone	78–59–1	7.0×10^{-1}	30	Representing group, has a relatively low HBL and the EE/O is highest of group, target compound in SW–846 method, PQL less than delisting level. Isophorone was chosen because the other constituents with lower HBLs have analytical measurement difficulties and isophorone had the highest EE/O.	4.2
10a	Diphenylamine	122–39–4	9.0×10^{-2}	15	Representing group, has a relatively low HBL and the EE/O is close to highest of group, target compound in SW–846 method, PQL less than delisting level. Diphenylamine was chosen because other constituents with lower HBLs have analytical measurement difficulties.	5.6×10^{-1}
10b	p-Chloroaniline	106–47–8	2.0×10^{-2}	10	Representing group, has a relatively low HBL and the EE/O is highest of group, target compound in SW–846 method, PQL less than delisting level. p-Chloroaniline was chosen over 4,4′-Methylenebis(2-chloroaniline) and o-Nitroaniline because of analytical measurement difficulties.	1.2×10^{-1}
10c	Acetonitrile	75–05–8	Rescinded, previous (1994) HBL is 0.2 mg/L.	10	Representing group, has a relatively low HBL and the EE/O is close to highest of group, target compound in SW–846 method, PQL less than delisting level, the 1994 established HBL (0.2 mg/l) is used. Acetonitrile was chosen because it has, by far, the highest EE/O.	1.2
10d	Carbazole	86–74–8	3.0×10^{-2}	30	Representing group, has a relatively low HBL and it is one of the more difficult compounds to destroy, target compound in SW–846 method, PQL less than delisting level. Carbazole was chosen because other constituents with lower HBLs have analytical measurement difficulties.	1.8×10^{-1}
10e	N-Nitrosodimethylamine	62–75–9	1.0×10^{-5}	10	Representing group, target compound in SW–846 method, because of analytical measurement difficulties, the PQL is used as the delisting level.	2.0×10^{-2}
10f	Pyridine	110^{-86-1}	4.0×10^{-3}	4	Representing group, the compound with a low HBL, target compound in SW–846 method, PQL less than delisting level. Pyridine was chosen because the other constituent with a lower HBL has analytical measurement difficulties.	2.4×10^{-2}

TABLE 1.—PROPOSED DELISTING CONSTITUENTS AND DELISTING LEVELS FOR TREATED EFFLUENT—Continued

Treatability group	Proposed delisting constituents	CAS #	HBL (mg/L)	EE/O	Justification	Proposed delisting level (mg/L)
11	Lindane [gamma-BHC]	58–89–9	5.0×10^{-4}	40	Representing group, has a low HBL and is one of the more difficult compounds to destroy, target compound in SW–846 method, PQL less than delisting level. Lindane was chosen because of those with lower HBLs lindane has the highest EE/O.	3.0×10^{-3}
12	Aroclor 1016, 1221, 1232, 1242, 1248, 1254, 1260.	PCBs	3.0×10^{-4}	15	Representing group, target compound in SW–846 method, delisting level based on TSCA value, PQL less than delisting level.	5.0×10^{-4}
13, 6a	Carbon tetrachloride*	56–23–5	3.0×10^{-3}	200	Representing group, has relatively low HBL and is the compound with the highest EE/O, target compound in SW–846 method, PQL less than delisting level. Carbon tetrachloride was chosen because the other constituent with a lower HBL has analytical measurement difficulties and carbon tetrachloride has by far the highest EE/O.	1.8×10^{-2}
18a	Tetrahydrofuran	109–99–9	9.0×10^{-2}	4	Representing group 18 and 18a, a compound with relatively low HBL, target compound in SW–846 method, PQL less than delisting level. Tetrahydrofuran was chosen because the other constituent with a lower HBL has analytical measurement difficulties.	5.6×10^{-1}
19	Acetone*	67–64–1	4.0×10^{-1}	10	Representing group, has a relatively low HBL and is one of the harder to destroy compounds, target compound in SW–846 method, PQL less than delisting level.	2.4
20	Carbon disulfide	75–15–0	4.0×10^{-1}	5	Representing group, the compound with the lowest HBL, target compound in SW–846 method, PQL less than delisting level.	2.3
21, 22	Barium*	7440–39–3	3.0×10^{-1}	.....	HBL × DAF is delisting level, PQL is less than delisting level.	1.6
21, 22	Beryllium*	7440–41–7	8.0×10^{-3}	.....	HBL × DAF is delisting level, PQL is less than delisting level.	4.5×10^{-2}
21, 22	Nickel*	7440–02–0	8.0e10^{-2}	.....	HBL × DAF is delisting level, PQL is less than delisting level.	4.5×10^{-1}
21, 22	Silver*	7440–22–4	2.0×10^{-2}	.....	HBL × DAF is delisting level, PQL is less than delisting level.	1.1×10^{-1}
21, 22	Vanadium*	7440–62–2	3.0×10^{-2}	.....	HBL × DAF is delisting level, PQL is less than delisting level.	1.6×10^{-1}
21, 22	Zinc*	7440–66–6	1.0	.....	HBL × DAF is delisting level, PQL is less than delisting level.	6.8
22, 21	Arsenic*	7440–38–2	5.0×10^{-4}	.....	HBL below PQL, PQL of 0.015 mg/L used as delisting level.	1.5×10^{-2}
22, 21	Cadmium*	7440–43–9	2.0×10^{-3}	.....	HBL × DAF is delisting level, PQL is less than delisting level.	1.1×10^{-2}
22, 21	Chromium*	7440–47–3	1.0×10^{-2}	.....	HBL × DAF is delisting level, PQL is less than delisting level.	6.8×10^{-2}
22, 21	Lead*	7439–92–1	1.5×10^{-2}	.....	No HBL, used MCL of 0.015 mg/L and DAF = 6, (MCL * DAF).	9.0×10^{-2}
22, 21	Mercury*	7439–97–6	1.0×10^{-3}	.....	HBL × DAF is delisting level, PQL is less than delisting level.	$6.8 \times 10^{-3(2)}$
22, 21	Selenium*	7782–49–2	2.0×10^{-2}	.....	HBL × DAF is delisting level, PQL is less than delisting level.	1.1×10^{-1}
23	Fluoride*	16984–48–8	2.0×10^{-1}	.....	HBL × DAF is delisting level, PQL is less than delisting level.	1.2
24	Ammonia*	7664–41–7	1.0(3)	.....	HBL × DAF is delisting level, PQL is less than delisting level.	6.0
24	Cyanide*	57–12–5	8.0×10^{-2}	.....	HBL × DAF is delisting level, PQL is less than delisting level.	4.8×10^{-1}

TABLE 1.—PROPOSED DELISTING CONSTITUENTS AND DELISTING LEVELS FOR TREATED EFFLUENT—Continued

Treatability group	Proposed delisting constituents	CAS #	HBL (mg/L)	EE/O	Justification	Proposed delisting level (mg/L)
25a	Tributyl phosphate*	126–73–8	$2.0 \times 10^{-2(3)}$.	5	Representing group 25a and 25b, the compound with a low HBL, target compound in EPA method, PQL less than delisting level. No updated HBL. Previous delisting level is used, adjusted for a DAF of 6 instead of 10.	1.2×10^{-1}

CAS = Chemical Abstract Service. DAF = dilution attenuation factor. HBL = health-based levels. MCL = maximum contamination limit. PQL = practical quantitation limit. TSCA = Toxic Substances Control Act of 1976. (1) The HBL for cresol is assumed to be that for o-cresol and m-cresol. (2) The HBL for ammonia is assumed to be the same as used in the initial Delisting Petition. (3) The HBL for tributyl phosphate is assumed to be the same as used in the initial Delisting Petition. (4) The phrase ''Target compound in SW–846'' means that the associated constituent can be analyzed for and reported using promulgated SW–846 analytical methods.

*Current delisting parameters.

E. What Other Factors Did EPA Consider in Its Evaluation?

As noted in section III.C, EPA believes that the approach used in the original 200 Area ETF treated effluent delisting action is sound and environmentally protective. Further, EPA does not believe there is any basis to expand on the analysis conducted to support the original 200 Area ETF delisting. EPA has considered the potential for, but has concluded that there are no other factors that warrant consideration in this proposed delisting modification.

F. What Did EPA Conclude About DOE–RL's Analysis?

After reviewing the DOE–RL petition, EPA concludes that (1) no RCRA hazardous constituents are likely to be present in treated effluent above the proposed health-based delisting levels; and (2) the petitioned waste does not exhibit any of the characteristics of ignitability, corrosivity, reactivity, or toxicity (refer to 40 CFR 261.21, 261.22, 261.23, and 261.24, respectively).[12] In addition, EPA considered other factors or criteria enumerated in section I.B that could cause the wastes to be hazardous under RCRA. Today's proposal expands the list of constituents for which the wastes are excluded to include certain U- and P-listed waste numbers which are defined by 40 CFR 261.33 as acutely hazardous. EPA's analysis demonstrates that treated effluents do not contain U- and P-listed constituents above health-based delisting levels, and therefor no longer meet the criteria under which the waste was originally listed as an acutely hazardous waste. Therefore, the treated effluents may be excluded from the definition of hazardous waste. The remaining factors discussed in section I.B were considered as part the analysis EPA performed to establish exclusion limits and the verification sampling program applicable to the wastes considered in today's proposed exclusion.

G. What Must DOE RL Do To Demonstrate Compliance With the Proposed Exclusion?

DOE–RL's obligation to demonstrate compliance with this proposed exclusion has two key components. The first is to demonstrate that each influent wastewater is within the processing capabilities (defined in this context as the ability to treat to delisting levels) of the 200 Area ETF prior to treatment. This demonstration is made through application of the verified treatment efficiency process model for the 200 Area ETF unit operations to waste characterization data required by the waste characterization and acceptance procedures in Hanford's site-wide RCRA permit, WA7 89000 8967. The second component is a treated effluent sampling program intended to verify that the predicted treatment levels in fact are achieved. The verification sampling program in turn has two phases—an initial qualification sampling requirement applicable to all influent waste streams that do not have an operating history of treatment in 200 Area ETF, and an on-going verification ''spot check'' sampling requirement. The first qualification phase is intended to demonstrate that the predicted treatment efficiencies can be achieved for new waste streams, while the ''spot check'' requirement is intended to identify any long-term changes in treatment efficiency or influent waste stream variability that would impact the ability of the 200 Area ETF to meet delisting requirements. At any time that an initial or verification sampling event indicates failure to meet delisting criteria, the DOE–RL is required to re-evaluate the waste characterization data (to identify any constituents, constituent levels, or other factors that might affect treatability of the waste), the treatment strategy and operational baseline, and to make any changes necessary to ensure subsequent batches of treated effluent do not fail delisting criteria. As with new treatment strategies, the initial treated effluent batch after any waste treatment strategy changes also is subject to verification sampling to ensure the treatment strategy changes are effective. In all cases where verification sampling is required, the corresponding batch of treated effluent cannot be discharged to the SALDS unit until compliance with delisting exclusion limits can be documented. Both of these overall compliance components and the two verification sampling program phases are essentially the same as in the original delisting action, with modifications to reflect actual operating experience and the additional influent wastes the 200 Area ETF expects to manage under this proposed exclusion.

EPA is also proposing additional conditions to ensure ongoing compliance with delisting exclusion limits. First, EPA is proposing a re-opener provision to allow EPA to re-evaluate the protectiveness of today's exclusion limits and management requirements should new information become available that might alter

[12] Delisting requirements of 40 CFR 260.22 state that an excluded waste cannot exhibit any of the characteristics of hazardous waste (reactivity, ignitability, corrosivity or toxicity). The delisting levels in today's proposal are below the toxicity characteristics levels, and there is no record of untreated or treated aqueous wastewaters associated with the 200 Area ETF having sufficient concentrations of any constituent to suggest that the reactivity or ignitability characteristic might be of concern with respect to treated effluents. Similarly, the nature of the treatment processes at the 200 Area ETF, which include multiple pH adjustment steps, insure that treated effluents do not exhibit the characteristic of corrosivity. EPA believes that treated effluents satisfy these delisting requirements. DOE–RL, however, must demonstrate that treated effluents do not exhibit the characteristics of ignitability or corrosivity through application of process knowledge or analytical sampling according to 40 CFR 262.11.

conclusions reached should today's proposal be finalized. EPA currently includes this re-opener provision as a standard component of delisting rulemakings. Second, EPA is proposing record keeping and reporting requirements. These conditions are intended to ensure that documentation of information necessary to review the compliance history of RL is appropriately recorded and maintained.

H. How Must DOE RL Manage the Delisted Waste for Disposal?

As a condition of this proposed exclusion, DOE–RL would be required to dispose of treated effluent at the SALDS. As noted elsewhere in this proposal, EPA anticipates and encourages the DOE–RL to evaluate alternate reuse options for treated effluent. Such changes in management practices will require EPA approval pursuant to delisting condition 7.

I. How Must DOE RL Operate the Treatment Unit?

The DOE–RL would be required to operate the 200 Area ETF according to the waste processing strategies developed pursuant to this proposed exclusion, if finalized, including the waste treatment strategy developed under Condition (1)(a). Although not a specific condition of this proposed delisting, the DOE–RL also must operate the 200 Area ETF in compliance with applicable RCRA regulations, the requirements of the Hanford Facility RCRA Permit WA7 89000 8967, and in part, the requirements of the State Waste Discharge Permit ST4500.

J. What Must DOE RL Do if the Process Changes?

EPA expects that 200 Area ETF treatment technologies will evolve and/or change over the operating life of the unit in support of Hanford Facility cleanup. EPA is proposing an exclusion condition that will allow the DOE–RL to modify the treatability envelope for the 200 Area ETF with written EPA approval to reflect such changes. Under today's proposal, such changes to the treatability envelope will not require modifications to the exclusion rule. EPA notes that changes to the treatability envelope for ETF may require modification to the State Waste Discharge Permit ST4500 as well.

EPA has included a re-opener clause that may also provide a basis for modification of this proposed exclusion to reflect substantial changes to ETF or its performance. Since it is not possible to completely anticipate potential future changes or modifications to the 200 Area ETF treatment process, EPA is not providing a comprehensive definition of ''substantial'' in the context of the reopener clause. However, EPA is proposing that changes that would require Class II or Class III modifications to the Hanford Facility RCRA Permit WA7 89000 8967 would be considered ''substantial.'' Without enumerating all possible changes to the 200 Area ETF, this proposal serves as a general example of ''substantial'' changes.

EPA notes that substantial changes to the 200 Area ETF that would warrant EPA review in the context of today's proposed exclusion would also likely require modification of the Hanford Facility RCRA Permit WA7 89000 8967

K. What Data Must DOE RL Submit?

EPA believes that the methodology in this proposed exclusion provides a sound and robust basis to accommodate the diverse waste streams expected to be managed by the 200 Area ETF under this proposed exclusion. Based on the 200 Area ETF operating history, EPA does not expect that the RL will encounter exceedances of delisting levels during verification sampling. Should exceedances occur, however, the retreatment and subsequent verification requirements of Conditions (2) and (3) in today's proposal provide assurances against environmental harm. Should such an exceedance occur, however, EPA believes that it might be indicative of unanticipated changes in waste streams or 200 Area ETF operations that require regulatory evaluation beyond the self-implementing provisions of Conditions (2) and (3). Therefore, EPA is proposing a recordkeeping and data submission requirement to ensure that EPA and Ecology are aware of such situations, and have the opportunity to take any appropriate response actions.

The DOE–RL also must disclose new or different data related to the 200 Area ETF or disposal of the waste if the data is relevant to the delisting (*see* Condition (4) of the proposed rule for the specifics of this requirement). This provision will allow EPA to re-evaluate the exclusion if new or additional information becomes available to EPA. The EPA will evaluate the information on which we based the decision to see if the information still is correct, or if circumstances have changed so that the information no longer is correct or would cause EPA to deny the petition if presented. This provision expressly requires the DOE–RL to report differing site conditions or assumptions used in the petition within 10 days. If EPA discovers such information itself or from a third party, EPA can act on the information as appropriate. The language being proposed is similar to those provisions found in RCRA regulations governing no-migration petitions at 40 CFR 268.6.

EPA believes that we have the authority under RCRA and the Administrative Procedures Act, 5 U.S.C. 551 (1978) *et seq.* (APA), to re-open a delisting decision. We may re open a delisting decision when we receive new information that calls into question the assumptions underlying the delisting.

EPA believes a clear statement of its authority in delistings is merited in light of Agency experience, where the delisted waste leached at greater concentrations in the environment than the concentrations predicted when conducting the toxicity characteristic leaching procedure (TCLP), thus leading the Agency to repeal the delisting. *See* Reynolds Metals Company at 62 FR 37694 (July 14, 1997) and 62 FR 63458 (December 1, 1997). If a threat to human health and the environment presents itself, EPA will continue to address these situations case by case. Where necessary, EPA can make a good cause finding to justify emergency rulemaking. *See* 5 U.S.C. 553(b).

L. What Happens if DOE RL Fails To Meet the Conditions of the Exclusion?

If DOE–RL violates the terms and conditions established in the exclusion, the Agency may begin procedures to withdraw the exclusion. If the analytical testing of the waste indicates treated effluents do not meet the delisting criteria described previously, the DOE–RL must notify EPA according to Condition (6). Because the 200 Area ETF provides the capability to re-treat waste, EPA is not proposing to suspend this proposed exclusion if verification sampling results fail to demonstrate compliance with delisting levels. The proposed delisting conditions do, however, require the DOE–RL to review and/or modify the associated waste processing strategy to ensure future treatment batches meet delisting criteria, and to perform additional verification testing to demonstrate that changes are effective. Since the conditions of today's proposed exclusion require DOE–RL to maintain records of verification sampling and waste processing strategies, and report verification failures to EPA (*see* Condition 6(b)), EPA can evaluate whether verification sampling failures are isolated and adequately addressed by re-treatment, or indicative of repeated and consistent failures that might warrant reopening of the exclusion rule under Condition 4. **Note:** Failure of treated effluent exclusion limits would not necessarily provide a basis to begin withdrawal proceedings,

because the waste could be managed as hazardous without violating terms of today's proposed exclusion, or applicable waste management requirements.

M. What Is EPA's Final Evaluation of This Delisting Petition?

We have reviewed DOE–RL's November 29, 2001 delisting petition, the operating history of the 200 Area ETF treatment process, the basis EPA used to establish the original delisting, and DOE–RL's proposed delisting levels and approach for waste acceptance and processing strategy development for new waste streams. EPA believes that these data and information provide a sufficient basis for EPA to grant the proposed modifications to the existing exclusion. The framework proposed by the DOE–RL for the 200 Area ETF operations, along with the updated verification requirement being proposed, ensures that the treated effluent will not pose a threat when managed as non-hazardous low-level radioactive waste in the SALDS. EPA, therefore, proposes to grant the proposed exclusion modification.

If we finalize this proposed exclusion, EPA no longer will regulate the petitioned waste as a listed hazardous waste under 40 CFR parts 262 through 268 and the permitting standards of part 270.

N. Relationship Between Today's Proposed Action and Compliance LDR Treatment Standards

Today's action proposes to exclude certain wastes from the definition of hazardous waste under the authority of 40 CFR 260.20 and 260.22. EPA is not proposing any action that establishes or imposes treatment requirements under the authority of land disposal restriction rules appearing at 40 CFR part 268, nor is EPA proposing that the numerical delisting criteria in today's proposal necessarily satisfy existing LDR treatment standards that may be applicable to treated effluents. In general, all of the influent wastewaters considered in today's proposal are expected to be generated and actively managed prior to the point of exclusion, should today's proposal be finalized. As such, EPA believes that the treated effluent in question are prohibited wastes and subject to applicable LDR treatment requirements prior to land disposal at the SALDS. For disposal at SALDS, applicable LDR prohibitions and treatment requirements are specified by WAC 173–303–140, which incorporates by reference 40 CFR part 268.

IV. Statutory and Executive Order Reviews

A. Executive Order 12866

Under Executive Order 12866 (58 FR 51735, October 4,1993), the Agency must determine whether the regulatory action is ''significant'', and therefore subject to OMB review and the requirements of the Executive Order. The Order defines ''significant regulatory action'' as one that is likely to result in a rule that may: (1) Have an annual effect on the economy of $100 million or more, or adversely affect in a material way, the economy, a sector of the economy, productivity, competition, jobs, the environment, public health or safety, or State, local or tribal governments or communities; (2) create a serious inconsistency or otherwise interfere with an action taken or planned by another agency; (3) materially alter the budgetary impact of entitlements, grants, user fees, or loan programs, or the rights and obligations of recipients thereof; or (4) raise novel legal or policy issues arising out of legal mandates, the President's priorities, or the principles set forth in the Executive Order. This proposal to grant an exclusion is not a ''significant regulatory action'' under the terms of Executive Order 12866, since its effect, if promulgated, would be to reduce the overall costs and economic impact of EPA's hazardous waste management regulations. This reduction would be achieved by excluding waste generated at a specific facility from EPA's lists of hazardous wastes, thus enabling a facility to manage its waste as non-hazardous. Therefore, EPA has determined that this proposed rule is not subject to OMB review.

B. Paperwork Reduction Act

The Paperwork Reduction Act, 44 U.S.C. 3501, *et seq.,* is intended to minimize the reporting and recordkeeping burden on the regulated community, as well as to minimize the cost of Federal information collection and dissemination. In general, the Act requires that information requests and recordkeeping requirements affecting ten or more non-Federal respondents be approved by OPM. Although this action proposes to establish or modify information and recordkeeping requirements for DOE–RL, it does not impose those requirements on any other facility or respondents, and therefore is not subject to the provisions of the Paperwork Reduction Act.

C. Regulatory Flexibility

The Regulatory Flexibility Act (RFA) generally requires an agency to prepare a regulatory flexibility analysis of any rule subject to notice and comment rulemaking requirements under the Administrative Procedure Act or any other statute unless the agency certifies that the rule will not have a significant economic impact on a substantial number of small entities. Small entities include small businesses, small organizations, and small governmental jurisdictions. For purposes of assessing the impacts of today's rule on small entities, small entity is defined as: (1) A small business, as codified in the Small Business Administration Regulations at 13 CFR part 121; (2) a small governmental jurisdiction that is a government of a city, county, town, school district or special district with a population of less than 50,000; and (3) a small organization that is any not-for-profit enterprise which is independently owned and operated and is not dominant in its field. EPA has determined that this action will not have a significant impact on small entities because the proposed rule will only have the effect of impacting the waste management of waste proposed for conditional delisting at the Hanford facility in the State of Washington. After considering the economic impacts of today's proposed rule, I certify that this action will not have a significant economic impact on a substantial number of small entities. We continue to be interested in the potential impacts of the proposed rule on small entities and welcome comments on issues related to such impacts.

D. Unfunded Mandates Reform Act

Title II of the Unfunded Mandates Reform Act (UMRA) of 1995 (Public Law 104–4) establishes requirements for Federal agencies to assess the effects of their regulatory actions on State, local and tribal governments and the private sector. Under section 202 of the UMRA, EPA generally must prepare a written statement, including a cost-benefit analysis, for proposed and final rules with ''Federal mandates'' that may result in expenditures to State, local and tribal governments, in the aggregate, or to the private sector, of $100 million or more in any year. Before promulgating an EPA rule for which a written statement is needed, section 205 of the UMRA generally requires EPA to identify and consider a reasonable number of regulatory alternatives and adopt the least costly, most cost-effective or least burdensome alternative that achieves the objectives of the rule. The provisions of section 205 do not apply when they are inconsistent with applicable law. Moreover, section 205 allows EPA to adopt an alternative other

than the least costly, most cost-effective or least burdensome alternative if the Administrator publishes with the final rule an explanation why the alternative was not adopted. Before EPA establishes any regulatory requirements that may significantly or uniquely affect small governments, including tribal governments, it must have developed under section 203 of the UMRA a small government agency plan. The plan must provide for notifying potentially affected small governments, enabling officials of affected small governments to have meaningful and timely input in the development of EPA regulatory proposals with significant Federal intergovernmental mandates, and informing, educating, and advising small governments on compliance with the regulatory requirements.

This proposed rule contains no Federal mandates (under the regulatory provisions of Title II of the UMRA) for State, local or tribal governments or the private sector. It imposes no new enforceable duty on any State, local or tribal governments or the private sector. Thus, today's proposed rule is not subject to the requirements of sections 202 and 205 of the UMRA. EPA has determined that this proposed rule contains no regulatory requirements that might significantly or uniquely affect small government entities. Thus, the requirements of section 203 of the UMRA do not apply to this rule.

E. Executive Order 13132: Federalism

Executive Order 13132, entitled ''Federalism'' (64 FR 43255, August 10, 1999), requires EPA to develop an accountable process to ensure ''meaningful and timely input by State and local officials in the development of regulatory policies that have federalism implications.'' ''Policies that have federalism implications'' is defined in the Executive Order to include regulations that have ''substantial direct effects on the States, on the relationship between the national government and the States, or on the distribution of power and responsibilities among various levels of government.''

This proposed rule does not have federalism implications. It will not have substantial direct effects on the States, on the relationship between the national government and the States, or on the distribution of power and responsibilities among various levels of government, as specified in Executive Order 13132. This proposed rule addresses the conditional delisting of waste at the federal Hanford Facility. Thus, Executive Order 13132 does not apply to this rule. Although Section 6 of the Executive Order 13132 does not apply to this proposed rule, EPA did consult with representatives of State and local governments in developing this rule. In the spirit of Executive Order 13132, and consistent with EPA policy to promote communications between EPA and State and local governments, EPA specifically solicits comment on this proposed rule from State and local officials.

F. Executive Order 13175: Consultation and Coordination With Indian Tribal Governments

Executive Order 13175, entitled ''Consultation and Coordination with Indian Tribal Governments'' (65 FR 67249, November 9, 2000), requires EPA to develop an accountable process to ensure ''meaningful and timely input by tribal officials in the development of regulatory policies that have tribal implications.'' This proposed rule does not have tribal implications, as specified in Executive Order 13175. The rule proposes to conditionally delist certain waste streams at the federal Hanford Facility and does not establish any regulatory policy with tribal implications. Thus, Executive Order 13175 does not apply to this proposed rule. EPA specifically solicits additional comment on this proposed rule from tribal officials.

G. Executive Order 13045: Protection of Children From Environmental Health and Safety Risks

Executive Order 13045 (62 FR 19885, April 23, 1997) applies to any rule that: (1) is determined to be ''economically significant'' as defined under Executive Order 12866, and (2) concerns an environmental health or safety risk that EPA has reason to believe may have a disproportionate effect on children. If the regulatory action meets both criteria, the Agency must evaluate the environmental health or safety effects of the planned rule on children, and explain why the planned regulation is preferable to other potentially effective and reasonably feasible alternatives considered by the Agency.

This proposed rule is not subject to Executive Order 13045 because it is not economically significant as defined in Executive Order 12866 and because the Agency does not have reason to believe the environmental health or safety risks addressed by this proposed action present a disproportionate risk to children. The proposed rule concerns the proposed conditional delisting of certain waste streams at the Hanford facility.

H. Executive Order 13211: Actions That Significantly Affect Energy Supply, Distribution, or Use

This rule is not subject to Executive Order 13211, ''Actions Concerning Regulations that Significantly Affect Energy Supply, Distribution, or Use'' (66 FR 28355, May 22, 2001) because it is not a ''significant regulatory action'' as defined under Executive Order 12866.

I. National Technology Transfer and Advancement Act

Section 12(d) of the National Technology Transfer and Advancement Act of 1995 (''NTTAA''), Public Law 104–113, section 12(d) (15 U.S.C. 272) directs EPA to use voluntary consensus standards in its regulatory activities unless to do so would be inconsistent with applicable law or otherwise impractical. Voluntary consensus standards are technical standards (*e.g.*, materials specifications, test methods, sampling procedures, and business practices) that are developed or adopted by voluntary consensus bodies. The NTTAA directs EPA to provide Congress, through the Offce of Management and Budget (OMB), explanations when the Agency decides to use ''government-unique'' standards in lieu of available and applicable voluntary consensus standards.

This proposed rulemaking involves environmental monitoring and measurement, but is not establishing new technical standards for verifying compliance with concentration limits, data quality or test methodology. EPA proposes not to require the use of specific, prescribed analytic methods. Rather, the Agency plans to allow the use of any method, whether it constitutes a voluntary consensus standard or not, that meets the prescribed performance criteria. Examples of performance criteria are discussed in ''Test Methods for Evaluating Solid Waste, Physical/Chemical Methods,'' EPA Publication-846, Third Edition, as amended by updates I, II, IIA, IIB and III. EPA welcomes comments on this aspect of the proposed rulemaking and, specifically, invites the public to identify potentially-applicable voluntary consensus standards and to explain why such standards should be used in this regulation, if finalized.

J. Executive Order 12898: Federal Actions To Address Environmental Justice in Minority Populations and Low Income Populations

To the greatest extent practicable and permitted by law, and consistent with the principles set forth in the report on

the National Performance Review, each Federal agency must make achieving environmental justice part of its mission by identifying and addressing, as appropriate, disproportionately high and adverse human health and environmental effects of its programs, policies, and activities on minority populations and low-income populations in the United States and its territories and possessions, the District of Columbia, the Commonwealth of Puerto Rico, and the Commonwealth of the Mariana Islands. Because this proposed rule addresses the conditional delisting of certain waste streams at the Hanford Facility, with no anticipated significant adverse human health or environmental effects, the rule is not subject to Executive Order 12898.

List of Subjects in 40 CFR Part 261

Environmental protection, Hazardous waste, Recycling, Reporting and recordkeeping requirements.

Authority: Sec. 3001(f) RCRA, 42 U.S.C. 6921(f).

Dated: July 6, 2004.

L. John Iani,

Regional Administrator, Region 10.

For the reasons set out in the preamble, 40 CFR part 261 is proposed to be amended as follows:

PART 261—IDENTIFYING AND LISTING HAZARDOUS WASTE

1. The authority citation for part 261 continues to read as follows:

Authority: 42 U.S.C. 6905, 6912(a), 6921, 6922, and 6938.

2. In Table 2, of Appendix IX of part 261, it is proposed to revise the entry for ''DOE RL, Richland, WA'' to read as follows:

Appendix IX to Part 261—Water Excluded Under §§ 260.20 and 260.22

* * * * *

TABLE 2.—WASTES EXCLUDED FROM SPECIFIC SOURCES

Facility/address	Waste description
*	* * * * * *
Department of Energy, Richland Operations (DOE–RL), Richland, Washington.	Treated effluents bearing the waste numbers identified below, from the 200 Area ETF located at the Hanford Facility, at a maximum generation rate of 210 million liters per year, subject to Conditions 1–7: This conditional exclusion applies to EPA Hazardous Waste Nos. F001, F002, F003, F004, F005, and F039. In addition, this conditional exclusion applies to all other U- and P-listed waste numbers that meet the following criteria: The U/P listed substance has a treatment standard established for wastewater forms of F039 multi-source leachate under 40 CFR 268.40, ''Treatment Standards for Hazardous Wastes''; and The as-generated waste stream prior to treatment in the 200 Area Effluent Treatment Facility (200 Area ETF) is in the form of dilute wastewater containing a maximum of 1.0 weight percent of any hazardous constituent. This exclusion shall apply at the point of discharge from the 200 Area ETF verification tanks after satisfaction of Conditions 1–7. Conditions: (1) Waste Influent Characterization and Processing Strategy Preparation. (a) Prior to treatment of any waste stream in the 200 Area ETF, the DOE–RL must: (i) Complete sufficient characterization of the waste stream to demonstrate that the waste stream is within the treatability envelope of 200 Area ETF as specified in Tables C–1 and C–2 of the delisting petition dated November 20, 2001. Results of the waste stream characterization and the treatability evaluation must be in writing and placed in the facility operating record, along with a copy of the November 29, 2001 petition. Waste stream characterization may be carried out in whole or in part using the waste analysis procedures in the Hanford Facility RCRA Permit, WA7 89000 8967; (ii) Prepare a written waste processing strategy specific to the waste stream, based on the ETF process model documented in the November 29, 2001 petition. (b) DOE–RL may modify the 200 Area ETF treatability envelope specified in Tables C–1 and C–2 of the November 29, 2001 delisting petition to reflect changes in treatment technology or operating practices upon written approval of the Regional Administrator. (c) DOE–RL shall conduct all 200 Area ETF treatment operations for a particular waste stream according to the written waste processing strategy, as may be modified by Condition 3(b)(1). (d) The following definitions apply: (i) A waste stream is defined as all wastewater received by the 200 Area ETF that meet the 200 Area ETF waste acceptance criteria as defined by the Hanford Facility RCRA Permit, WA7 89000 8967 and are managed under the same 200 Area ETF waste processing strategy. (ii) A waste processing strategy is defined as a specific 200 Area ETF unit operation configuration, primary operating parameters and expected maximum influent total dissolved solids (TDS) and total organic waste carbon (TOC). Each processing strategy shall require monitoring and recording of treated effluent conductivity for purposes of Condition (2)(b)(i)(E), and for monitoring and recording of primary operating parameters as necessary to demonstrate that 200 Area ETF operations are in accordance with the associated waste processing strategy. (iii) Primary operating parameters are defined as ultraviolet oxidation (UV/OX) peroxide addition rate, reverse osmosis reject ratio, and processing flow rate as measured at the 200 Area ETF surge tank outlet. (iv) Key unit operations are defined as filtration, UV/OX, reverse osmosis, ion exchange, and secondary waste treatment. (2) Testing. DOE–RL shall perform verification testing of treated effluents according to Conditions (a), (b), and (c) below. (a) Sample collection and analysis, including quality control (QC) procedures, must be performed according to current version of SW–846 or other EPA-approved methodologies. DOE–RL shall maintain a written sampling and analysis plan in the facility operating record. Results of all sampling and analysis, including quality assurance (QA)/QC information, shall be placed in the facility operating record. (b) Initial verification testing. (i) Verification sampling shall consist of a representative sample of one filled effluent discharge tank, analyzed for all constituents in Condition (5), and for conductivity for purposes of establishing a conductivity baseline with respect to Condition (2)(b)(i)(E). Verification sampling shall be required under each of the following conditions: (A) Any new or modified waste processing strategy;

TABLE 2.—WASTES EXCLUDED FROM SPECIFIC SOURCES—Continued

Facility/address	Waste description
	(B) Influent wastewater total dissolved solids or total organic carbon concentration increases by an order of magnitude or more above values established in the waste processing strategy; (C) Changes in primary operating parameters; (D) Changes in influent flow rate outside a range of 150 to 570 liters per minute; (E) Increase greater than a factor of ten (10) in treated effluent conductivity (conductivity changes indicate changes in dissolved ionic constituents, which in turn are a good indicator of 200 Area ETF treatment efficiency). (F) Any failure of initial verification required by this condition, or subsequent verification required by Condition (2)(c). (ii) Treated effluents shall be managed according to Condition 3. Once Condition (3)(a) is satisfied, subsequent verification testing shall be performed according to Condition (2)(c). (c) Subsequent Verification: Following successful initial verification associated with a specific waste processing strategy, DOE–RL must continue to monitor primary operating parameters, and collect and analyze representative samples from every fifteenth (15th) verification tank filled with 200 Area ETF effluents processed according to the associated waste processing strategy. These representative samples must be analyzed prior to disposal of 200 Area ETF effluents for all constituents in Condition (5). Treated effluent from tanks sampled according to this condition must be managed according to Condition (3). (3) Waste Holding and Handling: DOE–RL must store as hazardous waste all 200 Area ETF effluents subject to verification testing in Conditions (2)(b) and (2)(c), that is, until valid analyses demonstrate Condition (5) is satisfied. (a) If the levels of hazardous constituents in the samples of 200 Area ETF effluent are equal to or below the levels set forth in Condition (5), the 200 Area ETF effluents are not listed as hazardous wastes provided they are disposed of in the State Authorized Land Disposal Site (SALDS) (except as provided pursuant to Condition (7)), according to applicable requirements and permits. Subsequent treated effluent batches shall be subject to verification requirements of Condition (2)(c). (b) If hazardous constituent levels in any representative sample collected from a verification tank exceed any of the delisting levels set in Condition (5), DOE–RL must: (i) Review waste characterization data, and review and change accordingly the waste processing strategy as necessary to ensure subsequent batches of treated effluent do not exceed delisting criteria; (ii) Retreat the contents of the failing verification tank; (iii) Perform verification testing on the retreated effluent. If constituent concentrations are at or below delisting levels in Condition (5), the treated effluent are not listed hazardous waste provided they are disposed at SALDS according to applicable requirements and permits (except as provided pursuant to Condition (7)), otherwise repeat the requirements of Condition (3(b). (iv) Perform initial verification sampling according to Condition (2)(b) on the next treated effluent tank once testing required by Condition (3)(b)(iii) demonstrates compliance with delisting requirements. (4) Re-opener Language. (a) If, anytime before, during, or after treatment of waste in the 200 Area ETF, DOE–RL possesses or is otherwise made aware of any data (including but not limited to groundwater monitoring data, as well as data concerning the accuracy of site conditions or the validity of assumptions upon which the November 29, 2001 petition was based) relevant to the delisted waste indicating that the treated effluent no longer meets delisting criteria (excluding recordkeeping and data submissions required by Condition (6)), or that groundwater affected by discharge of the treated effluent exhibits hazardous constituent concentrations above health-based limits, DOE–RL must report such data, in writing, to the Regional Administrator within 10 days of first possessing or being made aware of that data. (b) DOE–RL shall provide written notification to the Regional Administrator no less than 180 days prior to any planned or proposed substantial modifications to the 200 Area ETF, exclusive of routine maintenance activities. This condition shall specifically include, but not be limited to, changes that do or would require Class II and III modification to the Hanford Facility RCRA Permit WA7 89000 8967 (in the case of permittee-initiated modifications) or equivalent modifications in the case of agency-initiated permit modifications. DOE–RL may request a modification to the 180-day notification requirement of this condition in the instance of agency-initiated permit modifications for purposes of ensuring coordination with permitting activities. (c) Based on the information described in paragraph (4)(a) or (4)(b) or any other relevant information received from any source, the Regional Administrator will make a preliminary determination as to whether the reported information requires Agency action to protest human health or the environment. Further action could include suspending or revoking the exclusion, or other appropriate response necessary to protect human health and the environment. (D) Delisting Levels: All total constituent concentrations in treated effluents managed under this exclusion must be equal to or less than the following levels, expressed as mg/L: Inorganic Constituents: Ammonia—6.0; Barium—1.6; Beryllium—4.5×10^{-2}; Nickel—4.5×10^{-1}; Silver—1.1×10^{-1}; Vanadium—1.6×10^{-1}; Zinc—6.8; Arsenic—1.5×10^{-2}; Cadmium—1.1×10^{-2}; Chromium—6.8×10^{-2}; Lead—9.0×10^{-2}; Mercury—6.8×10^{-3}; Selenium—1.1×10^{-1}; Fluoride—1.2; Cyanides—4.8×10^{-1}. Organic Constituents: Cresol—1.2; 2,4,6 Trichlorophenol—3.6×10^{-1}; Benzene—6.0×10^{-2}; Chrysene—5.6×10^{-1}; Hexachlorobenzene—2.0×10^{-3}; Hexachlorocyclopentadiene—1.8×10^{-1}; Dichloroisopropyl ether; [Bis(2-Chloroisopropyl) ether—6.0×10^{-2}; Di-n-octylphthalate—4.8×10^{-1}; 1-Butanol—2.4; Isophorone—4.2; Diphenylamine—5.6×10^{-1}; p-Chloroaniline—1.2×10^{-1}; Acetonitrile—1.2; Carbazole—1.8×10^{-1}; N-Nitrosodimethylamine—2.0×10^{-3}; Pyridine—2.4×10^{-2}; Lindane [gamma-BHC]—3.0×10^{-3}; Arochlor [total of Arochlors 1016, 1221, 1232, 1242, 1248, 1254, 1260]—5.0×10^{-4}; Carbon tetrachloride—1.8×10^{-2}; Tetrahydrofuran—5.6×10^{-1}; Acetone—2.4; Carbon disulfide—2.3; Tributyl phosphate—1.2×10^{-1}. (6) Recordkeeping and Data Submittals.

TABLE 2.—WASTES EXCLUDED FROM SPECIFIC SOURCES—Continued

Facility/address	Waste description
	(a) DOE–RL shall maintain records of all waste characterization, and waste processing strategies required by Condition (1), and verification sampling data, including QA/QC results, in the facility operating record for a period of no less than three (3) years. However, this period is automatically extended during the course of any unresolved enforcement action regarding the 200 Area ETF or as requested by EPA. (b) No less than thirty (30) days after receipt of verification data indicating a failure to meet delisting criteria of Condition (5), DOE–RL shall notify the Regional Administrator. This notification shall include a summary of waste characterization data for the associated influent, verification data, and any corrective actions taken according to Condition (3)(b)(i). (c) Records required by Condition (6)(a) must be furnished on request by EPA or the State of Washington and made available for inspection. All data must be accompanied by a signed copy of the following certification statement to attest to the truth and accuracy of the data submitted: "Under civil and criminal penalty of law for the making of submission of false or fraudulent statements or representations (pursuant to the applicable provisions of the Federal Code, which include, but may not be limited to, 18 U.S.C. 1001 and 42 U.S.C. 6928). I certify that the information contained in or accompanying this document is true, accurate, and complete. As to the (those) identified section(s) of the document for which I cannot personally verify its (their) truth and accuracy, I certify as the official having supervisory responsibility of the persons who, acting under my direct instructions, made the verification that this information is true, accurate, and complete. In the event that any of this information is determined by EPA in its sole discretion to be false, inaccurate, or incomplete, and upon conveyance of this fact to DOE–RL, I recognize and agree that this exclusion of waste will be void as if it never had effect or to the extent directed by EPA and that the DOE–RL will be liable for any actions taken in contravention of its RCRA and CERCLA obligations premised upon DOE–RL's reliance on the void exclusion." (7) Treated Effluent Disposal Requirements. DOE–RL may at any time propose alternate reuse practices for treated effluent managed under terms of this exclusion in lieu of disposal at the SALDS. Such proposals must be in writing to the Regional Administrator, and demonstrate that the risks and potential human health or environmental exposures from alternate treated effluent disposal or reuse practices do not warrant retaining the waste as a hazardous waste. Upon written approval by EPA of such a proposal, non-hazardous treated effluents may be managed according to the proposed alternate practices in lieu of the SALDS disposal requirement in paragraph (3)(a). The effect of such approved proposals shall be explicitly limited to approving alternate disposal practices in lieu of the requirements in paragraph (3)(a) to dispose of treated effluent in SALDS.
* * * * * * *	

[FR Doc. 04–15945 Filed 7–14–04; 8:45 am]
BILLING CODE 6560–50–P

Notices

Federal Register
Vol. 69, No. 135
Thursday, July 15, 2004

This section of the FEDERAL REGISTER contains documents other than rules or proposed rules that are applicable to the public. Notices of hearings and investigations, committee meetings, agency decisions and rulings, delegations of authority, filing of petitions and applications and agency statements of organization and functions are examples of documents appearing in this section.

DEPARTMENT OF AGRICULTURE

Food and Nutrition Service

Child and Adult Care Food Program: National Average Payment Rates, Day Care Home Food Service Payment Rates, and Administrative Reimbursement Rates for Sponsoring Organizations of Day Care Homes for the Period July 1, 2004–June 30, 2005

AGENCY: Food and Nutrition Service, USDA.

ACTION: Notice.

SUMMARY: This notice announces the annual adjustments to: the national average payment rates for meals and supplements served in child care centers, outside-school-hours care centers, at-risk afterschool care centers, and adult day care centers; the food service payment rates for meals and supplements served in day care homes; and the administrative reimbursement rates for sponsoring organizations of day care homes, to reflect changes in the Consumer Price Index. Further adjustments are made to these rates to reflect the higher costs of providing meals in the States of Alaska and Hawaii. The adjustments contained in this notice are made on an annual basis each July, as required by the statutes and regulations governing the Child and Adult Care Food Program (CACFP).

EFFECTIVE DATE: July 1, 2004.

FOR FURTHER INFORMATION CONTACT: Keith Churchill, Section Chief, Child and Adult Care and Summer Programs Section, Policy and Program Development Branch, Child Nutrition Division, Food and Nutrition Service, USDA, Alexandria, Virginia 22302, (703) 305–2620.

SUPPLEMENTARY INFORMATION:

Definitions

The terms used in this notice shall have the meanings ascribed to them in the regulations governing the CACFP (7 CFR Part 226).

Background

Pursuant to sections 4, 11 and 17 of the Richard B. Russell National School Lunch Act (NSLA) (42 U.S.C. 1753, 1759a and 1766), section 4 of the Child Nutrition Act of 1966 (CNA) (42 U.S.C. 1773) and 226.4, 226.12 and 226.13 of the regulations governing the CACFP (7 CFR Part 226), notice is hereby given of the new payment rates for institutions participating in CACFP. These rates shall be in effect during the period July 1, 2004 through June 30, 2005.

As provided for under the NSLA and the CNA, all rates in the CACFP must be revised annually on July 1 to reflect changes in the Consumer Price Index (CPI) for the most recent 12-month period. In accordance with this mandate, the Department last published the adjusted national average payment rates for centers, the food service payment rates for day care homes, and the administrative reimbursement rates for sponsors of day care homes on July 5, 2003, at 68 FR 40621 (for the period July 1, 2003–June 30, 2004).

BILLING CODE 3410–30–P

CHILD AND ADULT CARE FOOD PROGRAM (CACFP)
Per Meal Rates in Whole or Fractions of U.S. Dollars
Effective from July 1, 2004 - June 30, 2005

CENTERS		BREAKFAST	LUNCH AND SUPPER[1]	SUPPLEMENT
CONTIGUOUS STATES	PAID	0.23	0.21	0.05
	REDUCED PRICE	0.93	1.84	0.30
	FREE	1.23	2.24	0.61
ALASKA	PAID	0.33	0.35	0.09
	REDUCED PRICE	1.66	3.25	0.50
	FREE	1.96	3.65	1.00
HAWAII	PAID	0.25	0.25	0.06
	REDUCED PRICE	1.13	2.23	0.36
	FREE	1.43	2.63	0.72

DAY CARE HOMES	BREAKFAST		LUNCH AND SUPPER		SUPPLEMENT	
	TIER I	TIER II	TIER I	TIER II	TIER I	TIER II
CONTIGUOUS STATES	1.04	0.39	1.92	1.16	0.57	0.15
ALASKA	1.64	0.59	3.11	1.88	0.92	0.25
HAWAII	1.20	0.44	2.25	1.35	0.67	0.18

ADMINISTRATIVE REIMBURSEMENT RATES FOR SPONSORING ORGANIZATIONS OF DAY CARE HOMES PER HOME/PER MONTH RATES IN U.S. DOLLARS	Initial 50	Next 150	Next 800	Each Additional
CONTIGUOUS STATES	88	67	53	46
ALASKA	143	109	85	75
HAWAII	103	79	62	54

[1]**These rates do not include the value of commodities (or cash-in-lieu of commodities) which institutions receive as additional assistance for each lunch or supper served to participants under the program. A notice announcing the value of commodities and cash-in-lieu of commodities is published separately in the *Federal Register*.**

BILLING CODE 3410–30–C

The changes in the national average payment rates for centers reflect a 2.86 percent increase during the 12-month period, May 2003 to May 2004, (from 181.5 in May 2003 to 186.7 in May 2004) in the food away from home series of the CPI for All Urban Consumers.

The changes in the food service payment rates for day care homes reflect a 4.94 percent increase during the 12-month period, May 2003 to May 2004, (from 177.8 in May 2003 to 186.6 in May 2004) in the food at home series of the CPI for All Urban Consumers.

The changes in the administrative reimbursement rates for sponsoring organizations of day care homes reflect a 3.05 percent increase during the 12-month period, May 2003 to May 2004, (from 183.5 in May 2003 to 189.1 in May 2004) in the series for all items of the CPI for All Urban Consumers, published by the Bureau of Labor Statistics of the Department of Labor.

The total amount of payments available to each State agency for distribution to institutions participating in the program is based on the rates contained in this notice.

This action is not a rule as defined by the Regulatory Flexibility Act (5 U.S.C. 601–612) and thus is exempt from the provisions of that Act. This notice has been determined to be exempt under Executive Order 12866.

This program is listed in the Catalog of Federal Domestic Assistance under No. 10.558 and is subject to the provisions of Executive Order 12372, which requires intergovernmental consultation with State and local officials. (*See* 7 CFR Part 3015, Subpart V, and final rule related notice published at 48 FR 29114, June 24, 1983.)

This notice imposes no new reporting or recordkeeping provisions that are subject to Office of Management and Budget review in accordance with the Paperwork Reduction Act of 1995 (44 U.S.C. 3501–3518).

Authority: Sections 4(b)(2), 11a, 17(c) and 17(f)(3)(B) of the Richard B. Russell National School Lunch Act, as amended (42 U.S.C. 1753(b)(2), 1759a, 1766(f)(3)(B)) and section 4(b)(1)(B) of the Child Nutrition Act of 1966, as amended (42 U.S.C. 1773(b)(1)(B)).

Dated: July 9, 2004.

George A. Braley,

Associate Administrator.

[FR Doc. 04–16045 Filed 7–14–04; 8:45 am]

BILLING CODE 3410–30–P

DEPARTMENT OF AGRICULTURE

Food and Nutrition Service

National School Lunch, Special Milk, and School Breakfast Programs; National Average Payments/Maximum Reimbursement Rates

AGENCY: Food and Nutrition Service, USDA.

ACTION: Notice.

SUMMARY: This Notice announces the annual adjustments to: (1) The ''national average payments,'' the amount of money the Federal Government provides States for lunches, afterschool snacks and breakfasts served to children participating in the National School Lunch and School Breakfast Programs; (2) the ''maximum reimbursement rates,'' the maximum per lunch rate from Federal funds that a State can provide a school food authority for lunches served to children participating in the National School Lunch Program; and (3) the rate of reimbursement for a half-pint of milk served to nonneedy children in a school or institution which participates in the Special Milk Program for Children. The payments and rates are prescribed on an annual basis each July. The annual payments and rates adjustments for the National School Lunch and School Breakfast Programs reflect changes in the Food Away From Home series of the Consumer Price Index for All Urban Consumers. The annual rate adjustment for the Special Milk Program reflects changes in the Producer Price Index for Fluid Milk Products. These payments and rates are in effect from July 1, 2004 through June 30, 2005.

EFFECTIVE DATE: July 1, 2004.

FOR FURTHER INFORMATION CONTACT: Ms. Rosemary O'Connell, Section Chief, School Programs Section, Policy and Program Development Branch, Child Nutrition Division, Food and Nutrition Service, USDA, 3101 Park Center Drive, Room 640, Alexandria, VA 22302 or phone (703) 305–2590.

SUPPLEMENTARY INFORMATION:

Background

Special Milk Program for Children—Pursuant to section 3 of the Child Nutrition Act of 1966, as amended (42 U.S.C. 1772), the Department announces the rate of reimbursement for a half-pint of milk served to nonneedy children in a school or institution that participates in the Special Milk Program for Children. This rate is adjusted annually to reflect changes in the Producer Price Index for Fluid Milk Products, published by the Bureau of Labor Statistics of the Department of Labor.

For the period July 1, 2004 to June 30, 2005, the rate of reimbursement for a half-pint of milk served to a nonneedy child in a school or institution which participates in the Special Milk Program is 17 cents. This reflects an increase of 29.8 percent in the Producer Price Index for Fluid Milk Products from May 2003 to May 2004 (from a level of 143.2 in May 2003 to 185.9 in May 2004).

As a reminder, schools or institutions with pricing programs that elect to serve milk free to eligible children continue to receive the average cost of a half-pint of milk (the total cost of all milk purchased during the claim period divided by the total number of purchased half-pints) for each half-pint served to an eligible child.

National School Lunch and School Breakfast Programs—Pursuant to sections 11 and 17A of the National School Lunch Act, (42 U.S.C. 1759a and 1766a), and section 4 of the Child Nutrition Act of 1966, (42 U.S.C. 1773), the Department annually announces the adjustments to the National Average Payment Factors and to the maximum Federal reimbursement rates for lunches and afterschool snacks served to children participating in the National School Lunch Program and breakfasts served to children participating in the School Breakfast Program. Adjustments are prescribed each July 1, based on changes in the Food Away From Home series of the Consumer Price Index for All Urban Consumers, published by the Bureau of Labor Statistics of the Department of Labor. The changes in the national average payment rates for schools and residential child care institutions for the period July 1, 2004 through June 30, 2005 reflect a 2.86 percent increase in the Consumer Price Index for All Urban Consumers during the 12-month period May 2003 to May 2004 (from a level of 181.5 in May 2003 to 186.7 in May 2004). Adjustments to the national average payment rates for all lunches served under the National School Lunch Program, breakfasts served under the School Breakfast Program, and afterschool snacks served under the National School Lunch Program are rounded down to the nearest whole cent.

Lunch Payment Levels—Section 4 of the National School Lunch Act (42 U.S.C. 1753) provides general cash for food assistance payments to States to assist schools in purchasing food. The National School Lunch Act provides two different section 4 payment levels for lunches served under the National School Lunch Program. The lower payment level applies to lunches served by school food authorities in which less than 60 percent of the lunches served in the school lunch program during the second preceding school year were served free or at a reduced price. The higher payment level applies to lunches served by school food authorities in which 60 percent or more of the lunches served during the second preceding school year were served free or at a reduced price.

To supplement these section 4 payments, section 11 of the National School Lunch Act (42 U.S.C. 1759(a)) provides special cash assistance payments to aid schools in providing free and reduced price lunches. The section 11 National Average Payment Factor for each reduced price lunch

served is set at 40 cents less than the factor for each free lunch.

As authorized under sections 8 and 11 of the National School Lunch Act (42 U.S.C. 1757 and 1759a), maximum reimbursement rates for each type of lunch are prescribed by the Department in this Notice. These maximum rates are to ensure equitable disbursement of Federal funds to school food authorities.

Afterschool Snack Payments in Afterschool Care Programs—Section 17A of the National School Lunch Act (42 U.S.C. 1766a) establishes National Average Payments for free, reduced price and paid afterschool snacks as part of the National School Lunch Program.

Breakfast Payment Factors—Section 4 of the Child Nutrition Act of 1966 (42 U.S.C. 1773) establishes National Average Payment Factors for free, reduced price and paid breakfasts served under the School Breakfast Program and additional payments for free and reduced price breakfasts served in schools determined to be in ''severe need'' because they serve a high percentage of needy children.

Revised Payments

The following specific section 4, section 11 and section 17A National Average Payment Factors and maximum reimbursement rates for lunch, the afterschool snack rates, and the breakfast rates are in effect from July 1, 2004 through June 30, 2005. Due to a higher cost of living, the average payments and maximum reimbursements for Alaska and Hawaii are higher than those for all other States. The District of Columbia, Virgin Islands, Puerto Rico and Guam use the figures specified for the contiguous States.

National School Lunch Program Payments

Section 4 National Average Payment Factors—In school food authorities which served *less than 60 percent* free and reduced price lunches in School Year 2002–03, the payments for meals served are: *Contiguous States*—paid rate—21 cents, free and reduced price rate—21 cents, maximum rate—29 cents; *Alaska*—paid rate—35 cents, free and reduced price rate—35 cents, maximum rate—45 cents; *Hawaii*—paid rate—25 cents, free and reduced price rate—25 cents, maximum rate—33 cents.

In school food authorities which served *60 percent or more* free and reduced price lunches in School Year 2002–03, payments are: *Contiguous States*—paid rate—23 cents, free and reduced price rate—23 cents, maximum rate—29 cents; *Alaska*—paid rate—37 cents, free and reduced price rate—37 cents, maximum rate—45 cents; *Hawaii*—paid rate—27 cents, free and reduced price rate—27 cents, maximum rate—33 cents.

Section 11 National Average Payment Factors—Contiguous States—free lunch—203 cents, reduced price lunch—163 cents; *Alaska*—free lunch—330 cents, reduced price lunch—290 cents; *Hawaii*—free lunch—238 cents, reduced price lunch—198 cents.

Afterschool Snacks in Afterschool Care Programs—The payments are: *Contiguous States*—free snack—61 cents, reduced price snack—30 cents, paid snack—05 cents; *Alaska*—free snack—100 cents, reduced price snack—50 cents, paid snack—09 cents; *Hawaii*—free snack—72 cents, reduced price snack—36 cents, paid snack—06 cents.

School Breakfast Program Payments

For schools ''not in severe need'' the payments are: *Contiguous States*—free breakfast—123 cents, reduced price breakfast—93 cents, paid breakfast—23 cents; *Alaska*—free breakfast—196 cents, reduced price breakfast—166 cents, paid breakfast—33 cents; *Hawaii*—free breakfast—143 cents, reduced price breakfast—113 cents, paid breakfast—25 cents.

For schools in ''severe need'' the payments are: Contiguous States—free breakfast—147 cents, reduced price breakfast—117 cents, paid breakfast—23 cents; Alaska—free breakfast—235 cents, reduced price breakfast—205 cents, paid breakfast—33 cents; Hawaii—free breakfast—171 cents, reduced price breakfast—141 cents, paid breakfast—25 cents.

Payment Chart

The following chart illustrates: The lunch National Average Payment Factors with the sections 4 and 11 already combined to indicate the per lunch amount; the maximum lunch reimbursement rates; the reimbursement rates for afterschool snacks served in afterschool care programs; the breakfast National Average Payment Factors including ''severe need'' schools; and the milk reimbursement rate. All amounts are expressed in dollars or fractions thereof. The payment factors and reimbursement rates used for the District of Columbia, Virgin Islands, Puerto Rico and Guam are those specified for the contiguous States.

BILLING CODE 3410–30–P

SCHOOL PROGRAMS
MEAL, SNACK AND MILK PAYMENTS TO STATES AND SCHOOL FOOD AUTHORITIES
Expressed in Dollars or Fractions Thereof
Effective from: July 1, 2004 - June 30, 2005

NATIONAL SCHOOL LUNCH PROGRAM*		LESS THAN 60%	60% OR MORE	MAXIMUM RATE
CONTIGUOUS STATES	PAID	0.21	0.23	0.29
	REDUCED PRICE	1.84	1.86	2.01
	FREE	2.24	2.26	2.41
ALASKA	PAID	0.35	0.37	0.45
	REDUCED PRICE	3.25	3.27	3.49
	FREE	3.65	3.67	3.89
HAWAII	PAID	0.25	0.27	0.33
	REDUCED PRICE	2.23	2.25	2.41
	FREE	2.63	2.65	2.81
SCHOOL BREAKFAST PROGRAM		NON-SEVERE NEED		SEVERE NEED
CONTIGUOUS STATES	PAID	0.23		0.23
	REDUCED PRICE	0.93		1.17
	FREE	1.23		1.47
ALASKA	PAID	0.33		0.33
	REDUCED PRICE	1.66		2.05
	FREE	1.96		2.35
HAWAII	PAID	0.25		0.25
	REDUCED PRICE	1.13		1.41
	FREE	1.43		1.71
SPECIAL MILK PROGRAM		ALL MILK	PAID MILK	FREE MILK
PRICING PROGRAMS WITHOUT FREE OPTION		0.17	N/A	N/A
PRICING PROGRAMS WITH FREE OPTION		N/A	0.17	Average Cost Per 1/2 Pint of Milk
NONPRICING PROGRAMS		0.17	N/A	N/A
AFTERSCHOOL SNACKS SERVED IN AFTERSCHOOL CARE PROGRAMS				
CONTIGUOUS STATES	PAID	0.05		
	REDUCED PRICE	0.30		
	FREE	0.61		
ALASKA	PAID	0.09		
	REDUCED PRICE	0.50		
	FREE	1.00		
HAWAII	PAID	0.06		
	REDUCED PRICE	0.36		
	FREE	0.72		

*Payment listed for Free and Reduced Price Lunches include both section 4 and section 11 funds

BILLING CODE 3410–30–C

This action is not a rule as defined by the Regulatory Flexibility Act (5 U.S.C. 601–612) and thus is exempt from the provisions of that Act.

In accordance with the Paperwork Reduction Act of 1995 (44 U.S.C. 3507), no new recordkeeping or reporting requirements have been included that are subject to approval from the Office of Management and Budget.

This action is exempted from review by the Office of Management and Budget under Executive Order 12866.

National School Lunch, School Breakfast and Special Milk Programs are listed in the Catalog of Federal Domestic Assistance under No. 10.555, No. 10.553 and No. 10.556, respectively, and are subject to the provisions of Executive Order 12372, which requires intergovernmental consultation with State and local officials. (*See* 7 CFR Part 3015, Subpart V, and the final rule related notice published at 48 FR 29114, June 24, 1983.)

Authority: Sections 4, 8, 11 and 17A of the National School Lunch Act, as amended, (42 U.S.C. 1753, 1757, 1759a, 1766a) and sections 3 and 4(b) of the Child Nutrition Act, as amended, (42 U.S.C. 1772 and 42 U.S.C. 1773(b)).

Dated: June 9, 2004.

George A. Braley,

Associate Administrator, Food and Nutrition Service.

[FR Doc. 04–16044 Filed 7–14–04; 8:45 am]

BILLING CODE 3410–30–P

BROADCASTING BOARD OF GOVERNORS

Sunshine Act Meeting

DATE AND TIME: July 20, 2004 2–5:15 p.m.

PLACE: Cohen Building, Room 3321, 330 Independence Ave., SW., Washington, DC 20237.

CLOSED MEETING: The members of the Broadcasting Board of Governors (BBG) will meet in closed session to review and discuss a number of issues relating to U.S. Government-funded non-military international broadcasting. They will address internal procedural, budgetary, and personnel issues, as well as sensitive foreign policy issues relating to potential options in the U.S. international broadcasting field. This meeting is closed because if open it likely would either disclose matters that would be properly classified to be kept secret in the interest of foreign policy under the appropriate executive order (5 U.S.C. 552b.(c)(1)) or would disclose information the premature disclosure of which would be likely to significantly frustrate implementation of a proposed agency action. (5 U.S.C. 552b.(c)(9)(B)) In addition, part of the discussion will relate solely to the internal personnel and organizational issues of the BBG or the International Broadcasting Bureau. (5 U.S.C. 552b.(c)(2) and (6))

FOR FURTHER INFORMATION CONTACT: Persons interested in obtaining more information should contact either Brenda Hardnett or Carol Booker at (202) 401–3736.

Dated: July 12, 2004.

Carol Booker,

Legal Counsel.

[FR Doc. 04–16201 Filed 7–13–04; 1:11 pm]

BILLING CODE 8230–01–M

DEPARTMENT OF COMMERCE

International Trade Administration

[A–570–831]

Fresh Garlic From the People's Republic of China: Notice of Extension of Time Limit for the Preliminary Results of Antidumping Duty Administrative Review

AGENCY: Import Administration, International Trade Administration, Department of Commerce.

SUMMARY: The Department of Commerce is extending the time limit for the preliminary results of the administrative review of the antidumping duty order on fresh garlic from the People's Republic of China until November 29, 2004. This extension applies to the administrative review of seventeen exporters, Clipper Manufacturing Ltd., Jinxiang Dong Yun Freezing Storage Co., Ltd., Fook Huat Tong Kee Pte., Ltd., H&T Trading Company, Huaiyang Hongda Dehydrated Vegetable Company, Jinxiang Hongyu Freezing and Storing Co., Ltd., Jinan Yipin Corporation, Ltd., Linshu Dading Private Agricultural Products Co., Ltd., Linyi Sanshan Import & Export Trading Co., Ltd., Shandong Heze International Trade and Developing Co., Shanghai Ever Rich Trade Company, Sunny Import & Export Limited, Taian Ziyang Food Co., Ltd, Tancheng County Dexing Foods Co., Ltd., Jining Trans-High Trading Co., Ltd., Xiangcheng Yisheng Foodstuffs Co., and Zhengzhou Harmoni Spice Co., Ltd. The period of review is November 1, 2002, through October 31, 2003.

EFFECTIVE DATE: July 15, 2004.

FOR FURTHER INFORMATION CONTACT: Minoo Hatten or Mark Ross, AD/CVD Enforcement, Import Administration, International Trade Administration, U.S. Department of Commerce, 14th Street and Constitution Avenue, NW., Washington, DC 20230; telephone: (202) 482–1690 and (202) 482–4792, respectively.

Background

On December 24, 2003, the Department of Commerce (the Department) published in the **Federal Register** the *Notice of Initiation of Antidumping and Countervailing Duty Administrative Reviews* (68 FR 74550), in which it initiated an administrative review of the antidumping duty order on fresh garlic from the People's Republic of China (PRC).

Extension of Time Limit for Preliminary Results

Section 751(a)(3)(A) of the Tariff Act of 1930, as amended (the Act), provides that the Department will issue the preliminary results of an administrative review of an antidumping duty order within 245 days after the last day of the anniversary month of the date of publication of the order. The Act provides further that the Department may extend that 245-day period to 365 days if it determines it is not practicable to complete the review within the foregoing time period.

The Department has determined that it is not practicable to complete the preliminary results by the current deadline of August 2, 2004. There are a number of complex factual and legal questions related to the calculation of the antidumping margins in this administrative review, in particular the analysis of the valuation of the factors of production. We require additional time to issue supplemental questionnaires, review the responses, and verify certain information. Therefore, in accordance with section 751(a)(3)(A) of the Act, the Department is extending the time limit for the preliminary results by 120 days, until no later than November 29, 2004.

We are issuing and publishing this notice in accordance with sections 751(a)(1) and 777(i)(1) of the Act.

Dated: July 8, 2004.

Jeffrey A. May,

Deputy Assistant Secretary for Import Administration, Group I.

[FR Doc. 04–15983 Filed 7–14–04; 8:45 am]

BILLING CODE 3510–DS–P

DEPARTMENT OF COMMERCE

International Trade Administration

[A–421–807]

Certain Hot-Rolled Carbon Steel Flat Products From the Netherlands; Antidumping Duty Administrative Review; Extension of Time Limit

AGENCY: Import Administration, International Trade Administration, Department of Commerce.

ACTION: Notice of extension of time limit.

SUMMARY: The Department of Commerce (the Department) is extending the time limit for the preliminary results of the 2002–2003 administrative review of the antidumping duty order on certain hot-rolled carbon steel flat products from the Netherlands. This review covers one manufacturer/exporter of the subject merchandise to the United States and the period November 1, 2002 through October 31, 2003.

EFFECTIVE DATE: July 15, 2004.

FOR FURTHER INFORMATION CONTACT: David Cordell at (202) 482–0408 or Robert James at (202) 482–0649, Antidumping and Countervailing Duty Enforcement Group III, Office Eight, Import Administration, International Trade Administration, U.S. Department of Commerce, 14th Street and Constitution Avenue NW., Washington, DC 20230.

SUPPLEMENTARY INFORMATION: On December 24, 2003, in response to a request from petitioners, (United States Steel Corporation), and interested parties (International Steel Group and Nucor Corporation), we published a notice of initiation of this administrative review in the **Federal Register**. *See*

Initiation of Antidumping and Countervailing Duty Administrative Reviews, 68 FR 74550 (December 24, 2003). Pursuant to the time limits for administrative reviews set forth in section 751(a)(3)(A) of the Tariff Act of 1930, as amended (the Tariff Act), the current deadlines are August 1, 2004 for the preliminary results and November 29, 2004 for the final results. The Department, however, may extend the deadline for completion of the preliminary results of a review if it determines it is not practicable to complete the preliminary results within the statutory time limit. See 751(a)(3)(A) of the Tariff Act and section 351.213(h)(2) of the Department's regulations. In this case the Department has determined it is not practicable to complete this review within the statutory time limit because of significant issues which require additional time to evaluate. These include the examination of sales by respondent Corus Staal, BV's many affiliated parties in the U.S. market and in the home market and further examination of the cost of production response.

Therefore, the Department is extending the time limit for completion of the preliminary results until November 29, 2004 in accordance with section 751(a)(3)(A) of the Tariff Act. The deadline for the final results of this review will continue to be 120 days after publication of the preliminary results.

Dated: July 8, 2004.

Jeffrey May,

Deputy Assistant Secretary for Import Administration, Group I.

[FR Doc. 04–15984 Filed 7–14–04; 8:45 am]

BILLING CODE 3510–DS–P

DEPARTMENT OF COMMERCE

International Trade Administration

[A–549–821]

Notice of Amended Final Determination of Sales at Less Than Fair Value: Polyethylene Retail Carrier Bags From Thailand

AGENCY: Import Administration, International Trade Administration, Department of Commerce.

EFFECTIVE DATE: July 15, 2004.

FOR FURTHER INFORMATION CONTACT: Lyn Johnson or Fred Aziz, Import Administration, International Trade Administration, U.S. Department of Commerce, 14th Street and Constitution Avenue, NW., Washington, DC 20230; telephone: (202) 482–4733.

Amendment to Final Determination

In accordance with sections 735(d) and 777(i)(1) of the Tariff Act of 1930, as amended, (the Act), on June 18, 2004, the Department of Commerce published its notice of final determination of sales at less than fair value (LTFV) in the investigation of polyethylene retail carrier bags (PRCBs) from Thailand. See *Notice of Final Determination of Sales at Less Than Fair Value: Polyethylene Retail Carrier Bags from Thailand,* 69 FR 34122 (June 18, 2004) (*Final Determination*) and corresponding ''Issues and Decision Memorandum'' dated June 9, 2004. On June 17, 2004, Advance Polybag Inc., Alpine Plastics Inc., API Enterprises Inc., and Universal Polybag Co., Ltd. (collectively, Universal,) filed a timely allegation stating that the Department made a ministerial error in its final determination. On June 21, 2004, the Polyethylene Retail Carrier Bag Committee and its individual members, PCL Packing, Inc., Hilex Poly Co., LLC, Superbag Corp., Vanguard Plastics Inc., and Inteplast Group, Ltd. (collectively, the petitioners), filed submissions with respect to TPBG and Universal, alleging that the Department had made ministerial errors in the *Final Determination.* On June 25, 2004, Thai Plastic Bags Industries Co., Ltd. (TPBI), Winner's Pack Co., Ltd., and APEC Film Ltd (APEC) (collectively, the Thai Plastic Bags Industries Group (TPBG)), filed comments rebutting the petitioners' ministerial-error allegations. On June 28, 2004, Universal filed comments rebutting the petitioners' ministerial-error allegations.

After analyzing Universal's, TPBG's, and the petitioners' submissions, we have determined, in accordance with 19 CFR 351.224(e), that we made the following ministerial errors in our calculations performed for the final determination:

(1) We used the incorrect figure for Universal's CEP-profit ratio. We should have changed the CEP-profit ratio figure to reflect our decision to use TPBG's profit data for Universal in the *Final Determination.*

(2) We incorrectly applied the duty drawback amounts for TPBG.

(3) We did not revise the brokerage and handling amounts for TPBG correctly.

(4) We did not update the variable cost of manufacturing (COM) and total COM as a result of the changes identified in the June 9, 2004, memorandum from the Office of Accounting.

For a detailed discussion of the ministerial errors listed above, as well as the Department's analysis, see the July 8, 2004, amended final analysis memoranda for TPBG and Universal and the memorandum entitled ''Antidumping Duty Investigation on Polyethylene Retail Carrier Bags from Thailand—Amended Final Analysis Memo for All-Others Rate,'' dated July 8, 2004.

Therefore in accordance with 19 CFR 351.224(e), we are amending the final determination of sales at LTFV in the antidumping duty investigation of PRCBs from Thailand. The revised dumping margins are as follows:

Exporter/ manufacturer	Original final margin (percent)	Amended final margin (percent)
TPBG	0.62	2.26
Universal	5.66	5.35
All others	5.66	2.80

Continuation of Suspension of Liquidation

In accordance with section 735(c)(1)(B) of the Act, we will instruct U.S. Customs and Border Protection (CBP) to continue to suspend liquidation of all entries of subject merchandise from Thailand (including entries of subject merchandise produced and exported by TPBG because the weighted-average margin is no longer *de minimis*). We will also instruct CBP to require a cash deposit or the posting of a bond equal to the estimated amount by which the normal value exceeds the U.S. price as indicated in the chart above. These instructions suspending liquidation will remain in effect until further notice.

This determination is issued and published pursuant to sections 735(d) and 777(i)(1) of the Act.

Dated: July 7, 2004.

James J. Jochum,

Assistant Secretary for Import Administration.

[FR Doc. 04–15980 Filed 7–14–04; 8:45 am]

BILLING CODE 3510–DS–P

DEPARTMENT OF COMMERCE

International Trade Administration

(A–570–886)

Notice of Amended Final Determination of Sales at Less Than Fair Value: Polyethylene Retail Carrier Bags From the People's Republic of China

AGENCY: Import Administration, International Trade Administration, Department of Commerce.

EFFECTIVE DATE: July 15, 2004.

FOR FURTHER INFORMATION CONTACT: Janis Kalnins or Thomas Schauer, Import Administration, International Trade Administration, U.S. Department of Commerce, 14th Street and Constitution Avenue, N.W., Washington, D.C. 20230; telephone: (202) 482–1392 and (202) 482–0410, respectively.

SUPPLEMENTARY INFORMATION:

Amendment to the Final Determination

In accordance with sections 735(a) and 777(i)(1) of the Tariff Act of 1930, as amended, (the Act), on June 18, 2004, the Department published its notice of final determination of sales at less than fair value (LTFV) in the investigation of polyethylene retail carrier bags (PRCBs) from the People's Republic of China (PRC). See *Notice of Final Determination of Sales at Less Than Fair Value: Polyethylene Retail Carrier Bags from the People's Republic of China*, 69 FR 34125 (June 18, 2004) (*Final Determination*). We received timely ministerial–error allegations from the Polyethylene Retail Carrier Bag Committee and its individual members (collectively, the petitioners) and from Nantong Huasheng Plastic Products Co., Ltd. (Nantong). On June 28, 2004, we received rebuttal comments concerning the petitioners ministerial–error allegations from Zhongshan Dongfeng Hung Wai Plastic Bag Manufactory (Zhongshan). No other party alleged ministerial errors or submitted comments.

After analyzing the submissions, we have determined, in accordance with 19 CFR 351.224(e), that we made the following ministerial errors in our calculations performed for the final determination:

We inadvertently included imports from the Ukraine in our calculation of the surrogate value for low–linear-density resin and included imports from the PRC in our calculation of the surrogate values for black and colored ink.

When we made an adjustment to exclude the aberrational import quantities of several countries (*i.e.*, South Africa, Israel, Switzerland, Italy, and Belgium) from our calculation of the surrogate value for black ink we used the wrong amounts.

We erroneously multiplied Hang Lung Plastic Manufactory, Limited's (Hang Lung's) reported international–freight expense, which was reported in U.S. dollars, by the Hong Kong dollar exchange rate.

We inadvertently did not convert Hang Lung's domestic inland freight from a per–kilogram basis to a per–thousand-bag basis.

We did not include the unit weight (weight per 1,000 bags) in our calculation of Xiamen Ming Pak Plastics Company, Limited's (Ming Pak's) domestic inland freight and brokerage and handling expenses.

We erroneously converted Nantong's reported U.S. prices and international–freight expense from a per–carton basis to a per–thousand-bag basis.

We did not convert the labor consumption that Nantong reported from a per–kilogram basis to a per–carton basis.

We made a typographical error in assigning Nantong's domestic–brokerage and marine–insurance expenses to U.S. sales such that we inadvertently assigned the expenses to all U.S. sales rather than just to those U.S. sales for which Nantong actually incurred such expenses.

Correcting these errors resulted in revised margins for all mandatory respondents, separate rate respondents, and parties subject to the PRC–wide rate. For a detailed discussion of the ministerial errors listed above, as well as the Department's analysis, see the July 6, 2004, Memorandum from Janis Kalnins to Mark Ross entitled ''Ministerial Error Allegations in the Final Determination of Sales at Less Than Fair Value; Polyethylene Retail Carrier Bags from the People's Republic of China.''

Therefore, in accordance with 19 CFR 351.224(e), we are amending the final determination of sales at LTFV in the investigation of PRCBs from the PRC. The revised dumping margins are as follows:

Producer & Exporter	Original final margin (percent)	Amended final margin (percent)
Hang Lung Plastic Manufactory, Limited	0.20	0.24
Dongguan Huang Jiang United Wah Plastic Bag Factory	23.19	23.22
Nantong Huasheng Plastic Products Co., Ltd.	2.29	0.01
Rally Plastics Company, Limited	23.81	23.85
Shanghai Glopack Packing Company, Limited and Sea Lake Polyethylene Enterprise, Limited	19.73	19.79
Xiamen Ming Pak Plastics Company, Limited	35.23	35.58
Zhongshan Dongfeng Hung Wai Plastic Bag Manufactory	41.21	41.28
Beijing Lianbin Plastics and Printing Company, Limited	23.06	25.69
Dongguan Zhongqiao	23.06	25.69
Good–in Holdings, Limited	23.06	25.69
Guangdong Esquel	23.06	25.69
Nan Sing	23.06	25.69
Ningbo Fanrong Plastics Products Company, Limited	23.06	25.69
Ningbo Huansen Plasthetics Company, Limited	23.06	25.69
Rain Continent Shanghai Company, Limited	23.06	25.69
Shanghai Dazhi Enterprise Development Company, Limited	23.06	25.69
Shanghai Fangsheng Coloured Packaging Company, Limited	23.06	25.69
Shanghai Jingtai Packaging Material Company, Limited	23.06	25.69
Shanghai Light Industrial Products Import and Export Corporation	23.06	25.69
Shanghai Minmetals Development, Limited	23.06	25.69
Shanghai New Ai Lian Import and Export Company, Limited	23.06	25.69
Shanghai Overseas International Trading Company, Limited	23.06	25.69
Shanghai Yafu Plastics Industries Company, Limited	23.06	25.69
Weihai Weiquan Plastic and Rubber Products Company, Limited	23.06	25.69
Xiamen Xingyatai Industry Company, Limited	23.06	25.69
Xinhui Henglong	23.06	25.69
PRC–wide Rate	77.33	77.57

Separate Rates

In the *Final Determination*, the Department calculated a weighted–average margin separate from the PRC–wide rate for those companies which provided responses to section A of the antidumping questionnaire. These companies are as follows: Beijing Lianbin Plastics and Printing Company, Limited, Dongguan Zhongqiao, Good–in Holdings, Limited, Guangdong Esquel, Nan Sing, Ningbo Fanrong Plastics Products Company, Limited, Ningbo Huansen Plasthetics Company, Limited, Rain Continent Shanghai Company, Limited, Shanghai Dazhi Enterprise Development Company, Limited, Shanghai Fangsheng Coloured Packaging Company, Limited, Shanghai Jingtai Packaging Material Company, Limited, Shanghai Light Industrial Products Import and Export Corporation, Shanghai Minmetals Development, Limited, Shanghai New Ai Lian Import and Export Company, Limited, Shanghai Overseas International Trading Company, Limited, Shanghai Yafu Plastics Industries Company, Limited, Weihai Weiquan Plastic and Rubber Products Company, Limited, Xiamen Xingyatai Industry Company, Limited, and Xinhui Henglong. We calculated the weighted–average margin for these companies based on the rates we calculated for the selected mandatory respondents. Because the rates of the selected mandatory respondents have changed as a result of correcting the ministerial errors listed above, we have recalculated the rate for the section A respondents to be 25.69 percent. For a more detailed discussion of the section A rate, see Memorandum to the File entitled ''Analysis for the Amended Final Determination of Polyethylene Retail Carrier Bags from the People's Republic of China (PRC): Calculation of the PRC–Wide Rate Based on Adverse Facts Available and the Non–Adverse Margin for Section A Respondents Not Selected for Investigation,'' dated July 8, 2004, PRC–Wide Rate Memorandum.

The PRC–Wide Rate

The PRC–wide rate we calculated in the *Final Determination* was 77.33 percent. As a result of correcting the ministerial errors discussed above, we have recalculated the PRC–wide rate to be 77.57 percent. For a more detailed discussion of the PRC–wide rate calculations, see the PRC–Wide Rate Memorandum.

Suspension of Liquidation

In accordance with section 735(c)(1)(b) of the Act, we will instruct U.S. Customs and Border Protection (CBP) to continue to suspend liquidation of all entries of PRCBs from the PRC (except for entries of Hang Lung and Nantong because these companies have de minimis margins). In accordance with section 351.204(e)(3) of our regulations, these exclusions only apply to merchandise produced and exported by Hang Lung and Nantong. For the other companies, we will instruct CBP to continue to require a cash deposit or the posting of a bond equal to the estimated amount by which the normal value exceeds the U.S. price as shown above. These instructions will remain in effect until further notice.

This determination is issued and published pursuant to sections 735(d) and 777(i)(1) of the Act.

Dated: July 7, 2004.

James J. Jochum,

Assistant Secretary for Import Administration.

[FR Doc. 04–15981 Filed 7–14–04; 8:45 am]

BILLING CODE 3510–DS–S

DEPARTMENT OF COMMERCE

International Trade Administration

[A–533–808]

Stainless Steel Wire Rod From India: Extension of Time Limit for the Preliminary Results of the Antidumping Duty Administrative Review

AGENCY: Import Administration, International Trade Administration, Department of Commerce.

SUMMARY: The Department of Commerce is extending the time limit for the preliminary results of the administrative review of the antidumping duty order on stainless steel wire rod from India until December 10, 2004. This extension applies to the administrative review of three producers, Chandan Steel, Ltd., Isibars Steel, Ltd., and The Viraj Group. The period of review is December 1, 2002, through November 30, 2003.

EFFECTIVE DATE: July 15, 2004.

FOR FURTHER INFORMATION CONTACT: Kristin Case or Minoo Hatten, AD/CVD Enforcement 5, Import Administration, International Trade Administration, U.S. Department of Commerce, 14th Street and Constitution Avenue, N.W., Washington, D.C. 20230; telephone: (202) 482–3174 and (202) 482–1690, respectively.

Background

On January 22, 2004, the Department of Commerce (the Department) published a notice of initiation of the antidumping duty administrative review covering two companies, Isibars Steel Ltd. and The Varij Group. See *Notice of Initiation of Antidumping and Countervailing Duty Administrative Reviews and Request for Revocation in Part*, 69 FR 3117. On February 24, 2004, the Department published a notice of initiation of the antidumping duty administrative review covering another company, Chandan Steel Ltd. (Chandan). See *Notice of Initiation of Antidumping and Countervailing Duty Administrative Reviews*, 69 FR 8379.[1]

Extension of Time Limit for Preliminary Results

The Tariff Act of 1930, as amended (the Act), at section 751(a)(3)(A), provides that the Department will issue the preliminary results of an administrative review of an antidumping duty order within 245 days after the last day of the anniversary month of the date of publication of the order. The Act provides further that if the Department determines that it is not practicable to complete the review within this time period, the Department may extend the 245–day period to 365 days.

The Department has determined that it is not practicable to complete the preliminary results by the current deadline of September 1, 2004. There are a number of complex factual questions pertaining to the sales practices and manufacturing costs which impact the calculation of the antidumping margins in the administrative review. We require additional time to analyze the questionnaire responses, issue supplemental questionnaires, and conduct verifications. Therefore, in accordance with section 751(a)(3)(A) of the Act, and 19 CFR 351.213(h)(2), the Department is extending the time limit for the preliminary results by 100 days to December 10, 2004.

We are issuing this notice in accordance with section 751(a)(3)(A) of the Act.

[1] The Department did not include Chandan in the initiation notice for December cases because the company requested evaluation as a new shipper. The Department denied this request after publication of the January 22, 2004, initiation notice for December cases. Because Chandan also made a timely request for an administrative review, the Department included Chandan in the 2002 - 2003 administrative review. Accordingly, all deadlines applicable to the companies included in the December intiation notice are applicable to Chandan.

Dated: July 8, 2004.

Jeffrey A. May,

Deputy Assistant Secretary for Import Administration, Group 1.

[FR Doc. 04–15982 Filed 7–14–04; 8:45 am]

BILLING CODE 3510–DS–S

DEPARTMENT OF COMMERCE

National Institute of Standards and Technology, National Telecommunications and Information Administration

IPv6 Public Meeting

AGENCY: National Institute of Standards and Technology, National Telecommunications and Information Administration, U.S. Department of Commerce

ACTION: Notice of Public Meeting

SUMMARY: The National Institute of Standards and Technology (NIST) and the National Telecommunications and Information Administration (NTIA), U.S. Department of Commerce, will host a half-day public meeting on Internet Protocol version 6 (IPv6), entitled ''IPv6 Public Meeting.'' The meeting will provide an opportunity for interested parties to discuss IPv6 deployment issues, including the appropriate government role, if any, in IPv6 deployment.

DATES: The IPv6 Public Meeting will be held from 9:00 a.m. to 1:30 p.m. on Wednesday, July 28, 2004.

ADDRESSES: The public meeting will be held at the U.S. Department of Commerce, 1401 Constitution Avenue, N.W., Room 4830, Washington, D.C. (Entrance to the Department of Commerce is on 14th Street between Constitution and Pennsylvania Avenues, N.W.)

FOR FURTHER INFORMATION CONTACT: Alfred Lee, Office of Policy Analysis and Development, NTIA, at (202) 482–1880, or via electronic mail: alee@ntia.doc.gov. Please direct media inquiries to the Office of Public Affairs, NTIA, at (202) 482–7002.

SUPPLEMENTARY INFORMATION: The Internet Protocol (IP) is a technical standard that enables computers and other devices to communicate with each other over networks, many of which interconnect to form the Internet. By providing a common format for the transmission of information across the Internet, IP facilitates communication among a variety of disparate networks and devices. This ability to communicate with a single, widely accepted format has been a key to the rapid growth and success of the Internet.

The current generation of IP, version 4 (IPv4), has been in use for more than twenty years, and has supported the Internet's phenomenal growth over the last decade. A variety of stakeholders, through the guiding efforts of the Internet Engineering Task Force (IETF), have developed a new version of IP, known as IPv6. IPv6 has several advantages over IPv4, including the availability of many more Internet addresses and additional user features and applications. IPv6 has also been designed to provide other features and capabilities, such as improved support for hierarchical addressing, a simplified header format, improved support for options and extensions, additional auto-configuration and reconfiguration features, and native security features.

In light of the potential benefits of IPv6, especially the security implications, the President's National Strategy to Secure Cyberspace directed the Secretary of Commerce to: ''[F]orm a task force to examine the issues related to IPv6, including the appropriate role of government, international interoperability, security in transition, and costs and benefits. The task force will solicit input from potentially impacted industry segments.''[1]

In response, the Department of Commerce formed a task force to study IPv6 and to prepare a report of its findings and recommendations. The IPv6 Task Force is co-chaired by the Administrator of NTIA and the Acting Director of NIST and consists of staff from these two agencies.

The IPv6 Task Force is in the process of compiling information from a variety of sources, including a request for comments issued in January of this year and survey research.[2] This public meeting is an important part of that process. The public meeting will have two panels. The first panel will address the costs and benefits of IPv6, security in transition, interoperability and other deployment issues. The second panel will address the appropriate role of government, if any, in deploying IPv6. Panelists will include scientists, technical experts, policy analysts, business leaders, and government officials.

NTIA will post an IPv6 Task Force discussion draft entitled, ''Technical and Economic Assessment of Internet Protocol Version 6 (IPv6),'' on NTIA's Web site at *http://www.ntia.doc.gov/ntiahome/ntiageneral/ipv6/index.html* prior to the IPv6 Public Meeting to facilitate discussion of IPv6 issues by interested parties. To obtain a printed copy of the discussion draft (1) write to NTIA, Room 4725, U.S. Department of Commerce, 1401 Constitution Avenue, N.W., Washington, DC 20230; (2) send an email to *alee@ntia.doc.gov;* (3) telephone (202) 482–1880; or (4) fax a request to (202) 482–6173.

Public Participation

The public meeting will be open to the public and press on a first-come, first-served basis. Space is limited. Due to security requirements and to facilitate entry to the Department of Commerce building, attendees must present photo identification and/or a U.S. Government building pass, if applicable, and should arrive at least one-half hour ahead of the panel sessions. The public meeting is physically accessible to people with disabilities. Any member of the public wishing to attend and requiring special services, such as sign language interpretation or other ancillary aids, should contact Alfred Lee at (202) 482–1880 or *alee@ntia.doc.gov* at least three (3) days prior to the meeting.

Dated: July 9, 2004.

Milton Brown

Acting Chief Counsel, National Telecommunications and Information Administration.

[FR Doc. 04–16019 Filed 7–14–04; 8:45 am]

BILLING CODE 3510–60–S

FEDERAL MARITIME COMMISSION

Ocean Transportation Intermediary License

Reissuance

Notice is hereby given that the following Ocean Transportation Intermediary license has been reissued by the Federal Maritime Commission pursuant to section 19 of the Shipping Act of 1984, as amended by the Ocean Shipping Reform Act of 1998 (46 U.S.C. app. 1718) and the regulations of the Commission pertaining to the licensing of Ocean Transportation Intermediaries, 46 CFR 515.

[1] *The National Strategy to Secure Cyberspace*, A/R 2-3, at 30 (Feb. 2003), http://www.whitehouse.gov/pcipb/cyberspace__strategy.pdf.

[2] *See* NIST, NTIA, Request for Comments on Deployment of Internet Protocol, Version 6, 69 Fed. Reg. 2890 (2004). Comments received in response are available on NTIA's web site at http://www.ntia.doc.gov/ntiahome/ntiageneral/ipv6/commentsindex.html.

License No.	Name/address	Date reissued
004130NF	GSG Investment Inc., dba Worldwide Logistics Company dba WWL dba Trade Passage, 2411 Santa Fe Avenue, Redondo Beach, CA 90278.	April 17, 2004.

Sandra L. Kusumoto,

Director, Bureau of Consumer Complaints and Licensing.

[FR Doc. 04–15990 Filed 7–14–04; 8:45 am]

BILLING CODE 6730–01–P

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

[I.D. 070904B]

New England Fishery Management Council; Public Meetings

AGENCY: National Marine Fisheries Service (NMFS), National Oceanic and Atmospheric Administration (NOAA), Commerce

ACTION: Notice of public meetings.

SUMMARY: The New England Fishery Management Council (Council) is scheduling public meetings of its Monkfish Advisory Panel and its Monkfish Committee in August, 2004 to consider actions affecting New England fisheries in the exclusive economic zone (EEZ). These groups will review public comment on the Draft Environmental Impact Statement (DSEIS) for Amendment 2 to the Monkfish Fishery Management Plan (FMP). The FMP is jointly managed by the Council and the Mid-Atlantic Fishery Management Council, and recommendations from these groups will be brought to the full Councils for formal consideration and action, if appropriate.

DATES: The meetings will be held on August 3, August 4 and August 13, 2004. See **SUPPLEMENTARY INFORMATION** for specific dates and times.

ADDRESSES: The meetings will be held in Danvers, MA and Baltimore, MD. See **SUPPLEMENTARY INFORMATION** for specific location.

Council address: New England Fishery Management Council, 50 Water Street, Mill 2, Newburyport, MA 01950.

FOR FURTHER INFORMATION CONTACT: Paul J. Howard, Executive Director, New England Fishery Management Council; telephone: (978) 465–0492.

SUPPLEMENTARY INFORMATION: *Tuesday, August 3, 2004 at 9 a.m.*—Monkfish Advisory Panel Meeting.

Location: Sheraton Ferncroft, 50 Ferncroft Road, Danvers, MA 01923; telephone: (978) 777–2500.

The Monkfish Advisory Panel will review public comment on the alternatives under consideration in the Amendment 2 DSEIS and make recommendations on preferred alternatives to the Monkfish Committee and Councils.

Wednesday, August 4, 2004 at 9 a.m.—Monkfish Committee Meeting.

Location: Sheraton Ferncroft, 50 Ferncroft Road, Danvers, MA 01923; telephone: (978) 777–2500.

The Monkfish Committee will review public comment on the alternatives under consideration in the Amendment 2 DSEIS and make recommendations on preferred alternatives to the Councils.

Friday, August 13, 2004 at 9 a.m.—Monkfish Committee Meeting.

Location: Wyndham Baltimore Inner Harbor Hotel, 101 West Fayette Street, Baltimore, MD 21201; telephone: (410) 752–1100.

The Monkfish Committee will review public comment on the alternatives under consideration in the Amendment 2 DSEIS and make recommendations on preferred alternatives to the Councils. NOTE: This meeting will only be held if the Committee does not finalize its recommendations at the August 4 meeting. The interested public is urged to monitor the New England Council website (*www.nefmc.org*) or contact the office to confirm the meeting is being held.

Although non-emergency issues not contained in this agenda may come before these groups for discussion, those issues may not be the subject of formal action during these meetings. Action will be restricted to those issues specifically listed in this notice and any issues arising after publication of this notice that require emergency action under section 305(c) of the Magnuson-Stevens Act, provided the public has been notified of the Council's intent to take final action to address the emergency.

Special Accommodations

These meetings are physically accessible to people with disabilities. Requests for sign language interpretation or other auxiliary aids should be directed to Paul J. Howard (see **ADDRESSES**) at least 5 days prior to the meeting dates.

Dated: July 9, 2004.

Alan D. Risenhoover,

Acting Director, Office of Sustainable Fisheries, National Marine Fisheries Service.

[FR Doc. E4–1568 Filed 7–14–04; 8:45 am]

BILLING CODE 3510–22–S

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

[I.D. 070904C]

Pacific Fishery Management Council; Public Meetings

AGENCY: National Marine Fisheries Service (NMFS), National Oceanic and Atmospheric Administration (NOAA), Commerce.

ACTION: Notice of public meetings.

SUMMARY: The Pacific Fishery Management Council's (Council) Coastal Pelagic Species Advisory Subpanel (CPSAS) and Coastal Pelagic Species Management Team (CPSMT) will hold public meetings.

DATES: The CPSAS will meet Tuesday, August 3, 2004 starting at 10 a.m. The CPSAS will reconvene Wednesday, August 4, from 8 a.m. until business for the day is completed. The CPSMT will meet Thursday, August 5, from 9 a.m. until business for the day is completed.

ADDRESSES: Both meetings will be held at the Sheraton Portland Airport Hotel, Cascade Room, 8235 NE Airport Way, Portland, OR 97220–1398; telephone: (503) 281–2500.

Council address: Pacific Fishery Management Council, 7700 NE Ambassador Place, Suite 200, Portland, OR 97220–1384.

FOR FURTHER INFORMATION CONTACT: Mr. Dan Waldeck, Pacific Fishery Management Council; telephone: (503) 820–2280.

SUPPLEMENTARY INFORMATION: The primary purpose of the CPSAS meeting is to develop information for the Council regarding a new framework for annual allocation of the Pacific sardine harvest guideline under the Coastal Pelagic Species (CPS) Fishery Management Plan (FMP). This meeting is part of the process through which the Council will prepare an Environmental Impact Statement in accordance with the National Environmental Policy Act (NEPA) of 1969 to analyze a range of

alternatives for the annual allocation of the Pacific sardine harvest guideline. NEPA requires consideration of a full range of reasonable alternatives including status quo (no action). The Council has not yet developed alternatives nor determined a preferred alternative. The tentative schedule for Council actions related to this matter is: September 2004, progress report; November 2004, review preliminary range of draft alternatives; January-February 2005, public hearings on range of alternatives; March or April 2005, preliminary action; June 2005, final action. If this schedule holds, and NMFS approves the Council action, the Council anticipates implementation of the new Pacific sardine allocation framework in time for the 2006 Pacific sardine fishery, which opens January 1.

The CPSAS will also review a draft report from the recent CPS stock assessment review (STAR) panel (69 FR 31967). Finally, the CPSAS will review draft information from the Channel Islands National Marine Sanctuary (CINMS) related to proposed management alternatives for establishing marine reserves and marine conservation areas in CINMS.

The CPSMT will review the draft CPS STAR report. The CPSMT will also consider a suite of CPS FMP-related issues that NMFS requested the Council consider. These issues include FMP harvest control rules, compatibility between California's proposed market squid FMP and the Council's CPS FMP, market squid overfishing definitions, CPS FMP bycatch provisions and pilot at-sea observer program, essential fish habitat, and five-year review of the CPS FMP Environmental Impact Statement. The CPSMT will review these issues identify issues that could be addressed through amendment of the CPS FMP, and if the issues could be addressed in the short-term or would require more extensive time to complete.

The CPSAS and CPSMT will report to the Council on each of these topics at the September 2004 Council meeting in Del Mar, CA.

Although non-emergency issues not contained in the CPSMT and CPSAS meeting agendas may come before the committees for discussion, those issues may not be the subject of formal action during this meeting. Action will be restricted to those issues specifically listed in this document and any issues arising after publication of this document that require emergency action under Section 305(c) of the Magnuson-Stevens Fishery Conservation and Management Act, provided the public has been notified of the CPSMT's or CPSAS's intent to take final action to address the emergency.

Special Accommodations

The meetings are physically accessible to people with disabilities. Requests for sign language interpretation or other auxiliary aids should be directed to Ms. Carolyn Porter at (503) 820–2280 at least 5 days prior to the meeting date.

Dated: July 9, 2004.

Alan D. Risenhoover,

Acting Director, Office of Sustainable Fisheries, National Marine Fisheries Service.

[FR Doc. E4–1569 Filed 7–14–04; 8:45 am]

BILLING CODE 3510–22–S

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

[I.D. 070704G]

Marine Mammals; File Nos. 881–1710, 87–1593, 455–1760, 898–1764, and 782–1676

AGENCY: National Marine Fisheries Service (NMFS), National Oceanic and Atmospheric Administration (NOAA), Commerce.

ACTION: Receipt of applications for permits and permit amendments.

SUMMARY: Notice is hereby given on the following permit requests:

File No. 881–1710: The Alaska SeaLife Center (ASLC), 301 Railway Avenue, Seward, AK 99664 (Dr. Shannon Atkinson, Principal Investigator (PI)), has requested an amendment to scientific research Permit No. 881–1710–02 for studies on harbor seals (*Phoca vitulina*).

File No. 87–1593: Daniel Costa, University of California, Santa Cruz, Long Marine Lab, 100 Shaffer Road, Santa Cruz, CA 95060, has requested an amendment to scientific research Permit No. 87–1593–04 for studies on southern elephant seals (*Mirounga leonia*).

File No. 455–1760: The Waikiki Aquarium, 2777 Kalakaua Avenue, Honolulu, HI 96815 (Dr. Andrew Rossiter, PI), has requested a scientific research and enhancement permit for studies on and maintenance of captive Hawaiian monk seals (*Monachus schauinslandi*).

File No. 898–1764: Sea Life Park Hawaii, 41–202 Kalanianaole Highway, Waimanalo, HI 96795 (Michael T. Osborn, PI), has requested a scientific research and enhancement permit for studies on and maintenance of captive Hawaiian monk seals.

File No. 782–1676: The NMFS Alaska Fisheries Science Center, National Marine Mammal Laboratory (NMML), 7600 Sand Point Way NE, Seattle, WA (Dr. John Bengtson, PI), has applied for a scientific research permit to study ringed seals (*Phoca hispida*), ribbon seals (*Phoca fasciata*), and bearded seals (*Erignathus barbatus*).

DATES: Written, telefaxed, or e-mail comments must be received on or before August 16, 2004.

ADDRESSES: The permit and permit amendment requests and related documents are available for review upon written request or by appointment in the following office(s):

All documents: Permits, Conservation and Education Division, Office of Protected Resources, NMFS, 1315 East-West Highway, Room 13705, Silver Spring, MD 20910; phone (301)713–2289; fax (301)713–0376;

File Nos. 881–1710 and 782–1676: Alaska Region, NMFS, P.O. Box 21668, Juneau, AK 99802–1668; phone (907)586–7221; fax (907)586–7249;

File No. 87–1593: Southwest Region, NMFS, 501 West Ocean Blvd., Suite 4200, Long Beach, CA 90802–4213; phone (562)980–4001; fax (562)980–4018; and

File Nos. 455–1760 and 898–1764: Protected Species Coordinator, Pacific Islands Regional Office, NMFS, 1601 Kapiolani Blvd., Rm, 1110, Honolulu, HI 96814–4700; phone (808)973–2935; fax (808)973–2941.

Written comments or requests for a public hearing on either request should be submitted to the Chief, Permits, Conservation and Education Division, F/PR1, Office of Protected Resources, NMFS, 1315 East-West Highway, Room 13705, Silver Spring, MD 20910. Those individuals requesting a hearing should set forth the specific reasons why a hearing on the particular request would be appropriate.

Comments may also be submitted by facsimile at (301)713–0376, provided the facsimile is confirmed by hard copy submitted by mail and postmarked no later than the closing date of the comment period.

Comments may also be submitted by e-mail. The mailbox address for providing email comments is *NMFS.Pr1Comments@noaa.gov*. Include the appropriate file number in the subject line of the e-mail comment as a document identifier.

FOR FURTHER INFORMATION CONTACT: Amy Sloan, Tammy Adams, Jennifer Skidmore, or Ruth Johnson, (301)713–2289.

SUPPLEMENTARY INFORMATION: The subject permit (File No. 782–1765),

subject amendment to Permit No. 881–1710–00, issued on December 2, 2003 (68 FR 68596) and further modified by two minor amendments (881–1710–01 and -02), and subject amendment to Permit No. 87–1593–01, issued on November 30, 2001 (66 FR 64022) and further modified by three minor amendments (87–1593–02, -03, and -04), are requested under the authority of the Marine Mammal Protection Act of 1972, as amended (MMPA; 16 U.S.C. 1361 *et seq.*), and the Regulations Governing the Taking and Importing of Marine Mammals (50 CFR part 216).

The subject permits (File Nos. 455–1760 and 898–1764) are requested under the authority of the MMPA, the Regulations Governing the Taking and Importing of Marine Mammals (50 CFR part 216), the Endangered Species Act of 1973, as amended (ESA; 16 U.S.C. 1531 *et seq.*), and the regulations governing the taking, importing, and exporting of endangered and threatened species (50 CFR 222–227).

Permit No. 881–1710–02 authorizes a long term study to investigate the long term effects of high and low lipid diets on the growth, development, maturity, and health of harbor seals. To accomplish this, five weaned harbor seals are authorized to be captured from the wild in the Gulf of Alaska for long term holding and research at the ASLC. Weaned female pups captured will be sampled in the wild as follows: sedation or anesthesia; body mass, morphometrics, and 3D photogrammetry; blood, blubber, whisker, and skin samples; body composition; flipper tagging and microchip implant; ultrasound; fecal and urine collection; skin and mucosal swabs; endoscopy; and disease screening.

Once at the ASLC the following will be performed annually on the five captured seals and the three adult seals permanently held there: monthly health assessments (as described above); hormone challenge experiments; weights and measurements; blood sampling; fecal and urine sampling; blubber ultrasound; bio-electrical impedance; total blood volume determination; deuterium oxide administration; feeding trials; mucosal swabs, saliva collection, examination of genitalia; blubber biopsies; video, photographic, radiographic, digital, and thermal imaging; and anesthesia and sedation as deemed necessary by the attending veterinarian. The permit expires on November 30, 2008.

The ASLC requests authorization to add a study to assess protein turnover rates in the eight harbor seals (both pups and adults) authorized to be held at the ASLC. The proposed study involves the administration of the stable isotope ^{15}[N] glycine, a non-essential amino acid involved in protein synthesis, to assess protein turnover in the seals through analysis of blood samples. Sodium bromide (NaBr) would also be administered and post dosage blood samples would occur concurrently for the substances. NaBr is a nonradioactive substance and is used to measure the extracellular phase of body water. Each procedure would occur up to two times per year for the duration of the permit. Also, the take table in the permit for studies at the ASLC on harbor seals has been further clarified and certain changes to the table are requested in this amendment. The activities proposed in this amendment are requested until the expiration of permit.

Permit No. 87–1593–04 authorizes Dr. Costa to conduct research on pinnipeds in two different projects: Project I authorizes research on up to 180 California sea lions (*Zalophus californianus*) annually, including capture, sedation, bleach marking, tagging (flipper and instrument), sampling (mass, morphometrics, muscle biopsy, blood, deuterium oxide, Evan's blue dye, milk, rectal temperature), heart-rate/stomach-temperature recorder attachment, insertion of a stomach temperature pill, and release. Incidental harassment of California sea lions, northern elephant seals, and northern fur seals is authorized during research in California. Project II authorizes capture, sedation, tagging (flipper and instrument), sampling (mass, morphometrics, blood, deuterium oxide, Evan's blue dye, lavage, ultrasound, whisker, claw, muscle and blubber biopsy) and release of up to 50 adult Crabeater seals (*Lobodon carcinophagus*), 10 adult leopard seals (*Hydrurga leptonyx*), 10 adult Weddell seals (*Leptonychotes weddellii*), and 10 adult Ross seals (*Ommatophoca rossii*). The permit expires on January 30, 2006. The permit holder requests an amendment to include the addition of up to 30 adult southern elephant seals to the annual activities in Project II, tagging and weighing of up to 50 immature elephant seals, population censusing, and incidental disturbance of up to 100 elephant seals during research. The purpose of this project is to examine the foraging behavior and habitat utilization of the southern elephant seal in the Western Antarctic Peninsula. This project would occur until the expiration date of the permit.

File No. 455–1760: The Waikiki Aquarium proposes to continue the long term maintenance of two captive adult male Hawaiian monk seals. The applicant proposes to conduct research studies on the metabolic requirements of the Hawaiian monk seal by examining seasonal changes in the following parameters associated with a fixed caloric intake: weight gain, blubber thickness, and fecal proximate analysis for seasonal variation in food assimilation. The applicant would also investigate oral and nasal bacterial flora to define the normal baseline and any potential pathogens for developing baseline data on diseases in Hawaiian monk seals. These projects would involve husbandry trained behaviors including weighing, ultrasound measurements, and swab sampling of nose and mouth. Proposed enhancement activities include increased public awareness of the status of the Hawaiian monk seal through an education program that includes web site information, live camera observations posted on the web, public classes, public educational exhibit lectures, a series of graphic panels around the monk seal exhibit, and direct observations of Hawaiian monk seals at the Waikiki Aquarium. The applicant has requested a 5–year permit.

File No. 898–1764: Sea Life Park Hawaii proposes to continue the long term maintenance of two adult male and two adult female captive Hawaiian monk seals. The applicant proposes to conduct research studies on the metabolic requirements of the Hawaiian monk seal by examining seasonal changes in weight gain associated with a known caloric intake. Proposed enhancement activities include increased public awareness through an education program that includes public educational exhibit lectures, public classes, and graphic panels around the monk seal exhibit. The applicant has requested a 5–year permit.

File No. 782–1765: NMML proposes to study the population size and trend, seasonal distribution and movements, habitat selection, and foraging ecology of bearded, ribbon and ringed seals in Alaska. Research objectives will be accomplished by aerial surveys, deployment of electronic instruments on seals, and collection of tissue samples during capture operations. Weaned pups to adults of each species would be studied. Up to 100 seals of each species would be captured, restrained, sedated as necessary, measured, weighed, flipper tagged, sampled (blood, flipper punch, vibrissae), and released; 50 of 100 of those captured would also have VHF, TDR, and/or satellite-linked TDR tags attached; 25 of the 100 captured would also have an underwater timed picture recorder package attached. Up to 15

animals of each species may be inadvertently captured a second time and released without further study. Incidental harassment of all species may occur from aerial surveys and captures. The applicant has requested a 5–year permit.

Concurrent with the publication of this notice in the **Federal Register**, NMFS is forwarding copies of the applications to the Marine Mammal Commission and its Committee of Scientific Advisors.

Dated: July 9, 2004.

Tammy C. Adams,

Acting Chief, Permits, Conservation and Education Division, Office of Protected Resources, National Marine Fisheries Service.

[FR Doc. 04–16062 Filed 7–14–04; 8:45 am]

BILLING CODE 3510–22–S

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

[I.D. 070904D]

Endangered Species; Permit File No. 1260

AGENCY: National Marine Fisheries Service (NMFS), National Oceanic and Atmospheric Administration (NOAA), Commerce.

ACTION: Receipt of application for modification.

SUMMARY: Notice is hereby given that the NMFS, Southeast Fisheries Science Center (SEFSC), 75 Virginia Beach Drive, Miami, FL 33149, has requested a modification to scientific research Permit No. 1260.

DATES: Written comments or requests for a public hearing must be received on or before August 16, 2004.

ADDRESSES: The modification request and related documents are available for review upon written request or by appointment in the following offices:

Permits, Conservation and Education Division, Office of Protected Resources, NMFS, 1315 East-West Highway, Room 13705, Silver Spring, MD 20910; phone (301)713–2289; fax (301)713–0376; and

Southeast Region, NMFS, 9721 Executive Center Drive North, St. Petersburg, FL 33702–2432; phone (727)570–5301; fax (727)570–5320.

Written comments or requests for a public hearing must be submitted to the Chief, Permits, Conservation and Education Division, F/PR1, Office of Protected Resources, NMFS, 1315 East-West Highway, Room 13705, Silver Spring, MD 20910. Those individuals requesting a hearing should set forth the specific reasons why a hearing on this modification request would be appropriate.

Comments may be submitted by facsimile to (301)713–0376, provided the facsimile is confirmed by hard copy submitted by mail and postmarked no later than the closing date of the comment period. They may also be submitted by e-mail. The mailbox address for providing e-mail comments is *NMFS.Pr1Comments@noaa.gov*. Include in the subject line of the e-mail comment the following document identifier: File No. 1260 Modification 6.

FOR FURTHER INFORMATION CONTACT: Patrick Opay, (301)713–1401 or Ruth Johnson, (301)713–2289.

SUPPLEMENTARY INFORMATION: The subject modification request to Permit No. 1260, issued on June 29, 2001 (66 FR 34621), is requested under the authority of the Endangered Species Act of 1973 as amended (16 U.S.C. 1531 *et seq.*) and the regulations governing the taking, importing, and exporting of endangered and threatened species (50 CFR 222–226).

Permit No. 1260 authorizes the SEFSC to take loggerhead (*Caretta caretta*), leatherback (*Dermochelys coriacea*), Kemp's ridley (*Lepidochelys kempii*), hawksbill (*Eretmochelys imbricata*), green (*Chelonia mydas*) and olive ridley (*L. olivacea*) sea turtles for scientific research. The SEFSC requests authorization to attach conventional or pop-up archival (PAT) tags on up to 15 leatherbacks which may be boated during the remainder of the Pelagic Longline Fishery Observers project. This tagging will not result in an increase in the number of animals taken as the SEFSC requests the activity be conducted on 15 of the leatherbacks that can already be sampled under the existing permit.

Additionally, the SEFSC requests that all projects under Permit No. 1260 include authority to handle, flipper and PIT tag, tissue sample and blood sample all turtles captured. The SEFSC also requests authority to have the option of deploying either PAT or conventional satellite tags via a tether attachment to the 20 loggerheads for which satellite tagging is already authorized under the existing Pelagic Longline Fishery Observers project. The SEFSC is currently authorized to deploy 20 conventional satellite tags using only the resin attachment method.

This modification will assist the SEFSC with its population assessment research of sea turtles. It will help the SEFSC obtain estimates of survival for juveniles and adults in their benthic and pelagic environments and will provide a more thorough understanding of the spatial population structure of these species. The research will help identify foraging grounds and migration corridors, as well as determine how both juveniles and adults utilize habitat and are distributed in space and time. The permit expires June 30, 2006.

Dated: July 9, 2004.

Tammy C. Adams,

Acting Chief, Permits, Conservation and Education Division, Office of Protected Resources, National Marine Fisheries Service.

[FR Doc. 04–16061 Filed 7–14–04; 8:45 am]

BILLING CODE 3510–22–S

DEPARTMENT OF EDUCATION

Notice of Proposed Information Collection Requests

AGENCY: Department of Education.

SUMMARY: The Leader, Regulatory Information Management Group, Office of the Chief Information Officer, invites comments on the proposed information collection requests as required by the Paperwork Reduction Act of 1995.

DATES: Interested persons are invited to submit comments on or before September 13, 2004.

SUPPLEMENTARY INFORMATION: Section 3506 of the Paperwork Reduction Act of 1995 (44 U.S.C. Chapter 35) requires that the Office of Management and Budget (OMB) provide interested Federal agencies and the public an early opportunity to comment on information collection requests. OMB may amend or waive the requirement for public consultation to the extent that public participation in the approval process would defeat the purpose of the information collection, violate State or Federal law, or substantially interfere with any agency's ability to perform its statutory obligations. The Leader, Regulatory Information Management Group, Office of the Chief Information Officer, publishes that notice containing proposed information collection requests prior to submission of these requests to OMB. Each proposed information collection, grouped by office, contains the following: (1) Type of review requested, *e.g.* new, revision, extension, existing or reinstatement; (2) Title; (3) Summary of the collection; (4) Description of the need for, and proposed use of, the information; (5) Respondents and frequency of collection; and (6) Reporting and/or Recordkeeping burden. OMB invites public comment.

The Department of Education is especially interested in public comment addressing the following issues: (1) Is

this collection necessary to the proper functions of the Department; (2) will this information be processed and used in a timely manner; (3) is the estimate of burden accurate; (4) how might the Department enhance the quality, utility, and clarity of the information to be collected; and (5) how might the Department minimize the burden of this collection on the respondents, including through the use of information technology.

Dated: July 9, 2004.

Angela C. Arrington,

Leader, Regulatory Information Management Group, Office of the Chief Information Officer.

Office of Elementary and Secondary Education

Type of Review: Revision.

Title: 21st Century Community Learning Centers Annual Performance Report.

Frequency: Annually.

Affected Public: State, Local, or Tribal Gov't, SEAs or LEAs; Not-for-profit institutions.

Reporting and Recordkeeping Hour Burden:

Responses: 1,400.

Burden Hours: 36,400.

Abstract: Originally authorized under Title X, Part I, of the Elementary and Secondary Education Act, the program was initially administered through the U.S. Department of Education, which provided grants directly to over 1,825 grantees. With the reauthorization of the program under the No Child Left Behind Act, direct administration of the program was transferred to state education agencies (SEA) to administer their own grant competitions. Preliminary data shows that states have awarded approximately 1,400 grants to support more than 4,700 centers in every state in the country.

Requests for copies of the proposed information collection request may be accessed from *http://edicsweb.ed.gov,* by selecting the ''Browse Pending Collections'' link and by clicking on link number 2579. When you access the information collection, click on ''Download Attachments'' to view. Written requests for information should be addressed to U.S. Department of Education, 400 Maryland Avenue, SW., Potomac Center, 9th Floor, Washington, DC 20202–4700. Requests may also be electronically mailed to the Internet address *OCIO_RIMG@ed.gov* or faxed to 202–245–6621. Please specify the complete title of the information collection when making your request.

Comments regarding burden and/or the collection activity requirements should be directed to Kathy Axt at her e-mail address *Kathy.Axt@ed.gov.* Individuals who use a telecommunications device for the deaf (TDD) may call the Federal Information Relay Service (FIRS) at 1–800–877–8339.

[FR Doc. 04–16059 Filed 7–14–04; 8:45 am]

BILLING CODE 4000–01–P

DEPARTMENT OF EDUCATION

Office of Special Education and Rehabilitative Services; Overview Information; Special Demonstration Programs—Model Transitional Rehabilitation Services for Youth and Young Adults With Disabilities; Notice Inviting Applications for New Awards for Fiscal Year (FY) 2004

Catalog of Federal Domestic Assistance (CFDA) Number: 84.235S.

Dates:

Applications Available: July 19, 2004.

Deadline for Transmittal of Applications: August 19, 2004.

Eligible Applicants: Public or nonprofit agencies or organizations, including institutions of higher education, for-profit organizations, State vocational rehabilitation (VR) agencies, community rehabilitation programs, and Indian tribes or tribal organizations.

Estimated Available Funds: $2,000,000.

Estimated Range of Awards: $200,000-$300,000.

Estimated Average Size of Awards: $250,000.

Estimated Number of Awards: 8.

Note: The Department is not bound by any estimates in this notice.

Project Period: Up to 60 months.

Full Text of Announcement:

I. Funding Opportunity Description

Purpose of Program: This program provides grants to eligible entities to support activities that increase the provision, extent, availability, scope, and quality of rehabilitation services.

Priority: In accordance with 34 CFR 75.105(b)(2)(ii), this priority is from the regulations for this program (34 CFR 373.6(a)(1), (a)(2), (b)(2), and (b)(10)).

Absolute Priority: For FY 2004 this priority is an absolute priority. Under 34 CFR 75.105(c)(3) we consider only applications that meet this priority.

This priority is:

Special Demonstration Programs—Model Demonstrations to Increase Meaningful Community Integration, Postsecondary Education, and Employment Outcomes for Transition-Age Youth and Young Adults With Disabilities Through Research-Based Mentoring Methods

Special demonstration projects under this priority must focus on research-based mentoring methods that provide appropriate supports for transition-age youth and young adults with disabilities. The projects must demonstrate research-based mentoring models that are aimed at increasing meaningful community integration, postsecondary education, and employment outcomes. To meet the requirements, an applicant must—

(1) Describe the research-based mentoring models that will be demonstrated through its project;

(2) Describe the outreach methods used to select project participants and the criteria by which mentors will be recruited;

(3) Describe how the proposed project will increase self-advocacy, high-level personal and career expectations, and decisionmaking. At a minimum, the project must describe how mentors will help consumers develop and improve self-confidence, community integration skills, work skills, self-determination skills, advocacy, and decisionmaking;

(4) Describe clear program objectives, goals, and outcomes, including expected outcomes in the areas of community integration, postsecondary education, and employment. Descriptions must include targets, such as the estimated number of individuals to be served and the number of those who are expected to become enrolled in higher education, and well-defined operational guidelines;

(5) Describe, in specific detail, the data that will be collected in order to measure the project's success in achieving its goals and meeting its targets;

(6) Describe the design and implementation of an internal evaluation plan for which—

(a) The methods of evaluation are thorough, feasible, and appropriate to the objectives, outcomes, and goals of the project;

(b) The methods of evaluation include the use of objective performance measures that are clearly related to the intended outcomes of the project and will produce quantitative and qualitative data to the extent possible; and

(c) The methods of evaluation provide performance feedback and permit periodic assessment of progress toward achieving intended outcomes; and

(7) Include a plan to widely disseminate the results of the project, including any mentoring methods that demonstrate positive results, so the mentoring model may be adapted, replicated, or integrated into State VR agencies and disability organizations.

Definitions:

For the purposes of this competition, the following definitions apply:

Employment outcome means, with respect to an individual, entering or retaining full-time or, if appropriate, part-time competitive employment in the integrated labor market, supported employment, or any other type of employment in an integrated setting, including self-employment, telecommuting, or business ownership, that is consistent with an individual's strengths, resources, priorities, concerns, abilities, capabilities, interests, and informed choice. (See 34 CFR 361.5(b))

Institution of higher education means an educational institution in any State that—

(1) Admits as regular students only persons having a certificate of graduation from a school providing secondary education or the recognized equivalent of such a certificate;

(2) Is legally authorized within such a State to provide a program of education beyond secondary education;

(3) Provides an educational program for which the institution awards a bachelor's degree or provides not less than a two-year program that is acceptable for full credit toward such a degree;

(4) Is a public or other nonprofit institution; and

(5) Is accredited by a nationally recognized accrediting agency or association or, if not so accredited, is an institution that has been granted preaccreditation status by such an agency or association that has been recognized by the Secretary for the granting of preaccreditation status, and the Secretary has determined that there is satisfactory assurance that the institution will meet the accreditation standards of such an agency or association within a reasonable time.

The term ''institution of higher education'' also includes—

(6) Any school that provides not less than a one-year program of training to prepare students for gainful employment in a recognized occupation and that meets the provisions of paragraphs (1), (2), (4), and (5) of this definition; and

(7) A public or nonprofit private educational institution in any State that, in lieu of the requirement in paragraph (1) of this definition, admits as regular students persons who are beyond the age of compulsory school attendance in the State in which the institution is located. (See 20 U.S.C. 1001)

Mentor, as generally defined, means a more successful, experienced person who can impart advice, support, insight, and knowledge on employment and other life activities to a less experienced person.

Mentoring, as generally defined, means the act of a mentor providing guidance in the form of teaching and support, encouraging and motivating, assisting with career and professional development, assisting with goal achievement, and linking the less experienced person to others who can help enhance growth and development.

Youth and young adults with disabilities means individuals with disabilities who are between the ages of 16 and 26 inclusive when entering the program. (*See* 34 CFR 373.4)

Program Authority: 29 U.S.C. 773(b).

Applicable Regulations: (a) The Education Department General Administrative Regulations (EDGAR) in 34 CFR parts 74, 75, 77, 79, 80, 81, 82, 84, 85, 86, 97, and 99. (b) The regulations for this program in 34 CFR part 373.

Note: The regulations in 34 CFR part 79 apply to all applicants except federally recognized Indian tribes.

Note: The regulations in 34 CFR part 86 apply to institutions of higher education only.

II. Award Information

Type of Award: Discretionary grants.

Estimated Available Funds: $2,000,000.

Estimated Range of Awards: $200,000–$300,000.

Estimated Average Size of Awards: $250,000.

Estimated Number of Awards: 8.

Note: The Department is not bound by any estimates in this notice.

Project Period: Up to 60 months.

III. Eligibility Information

1. *Eligible Applicants:* Public or nonprofit agencies or organizations, including institutions of higher education, for-profit organizations, State VR agencies, community rehabilitation programs, and Indian tribes or tribal organizations.

2. *Cost Sharing or Matching:* This program does not involve cost sharing or matching.

IV. Application and Submission Information

1. *Address to Request Application Package:* Education Publications Center (ED Pubs), P.O. Box 1398, Jessup, MD 20794–1398. Telephone (toll free): 1–877–433–7827. FAX: (301) 470–1244. If you use a telecommunications device for the deaf (TDD), you may call (toll free): 1–877–576–7734.

You may also contact ED Pubs at its Web site: *http://www.ed.gov/pubs/edpubs.html* or you may contact ED Pubs at its e-mail address: *edpubs@inet.ed.gov.*

If you request an application from ED Pubs, be sure to identify this competition as follows: CFDA number 84.235S.

Individuals with disabilities may obtain a copy of the application package in an alternative format (*e.g.*, Braille, large print, audiotape, or computer diskette) by contacting the Grants and Contracts Services Team, U.S. Department of Education, 400 Maryland Avenue, SW., room 5075, Potomac Center Plaza, Washington, DC 20202–2550. Telephone: (202) 245–7562.

2. *Content and Form of Application Submissions:* Requirements concerning the content of an application, together with the forms you must submit, are in the application package for this competition. Page Limit: The application narrative (Part III of the application) is where you, the applicant, address the selection criteria that reviewers use to evaluate your application. We suggest that you limit Part III to approximately 35 double-spaced pages.

3. *Submission Dates and Times:* Applications Available: July 19, 2004. Deadline for Transmittal of Applications: August 19, 2004.

The dates and times for the transmittal of applications by mail or by hand (including a courier service or commercial carrier) are in the application package for this competition. The application package also specifies the hours of operation of the e-Application Web site.

We do not consider an application that does not comply with the deadline requirements.

4. *Intergovernmental Review:* This program is subject to Executive Order 12372 and the regulations in 34 CFR part 79. However, in order to ensure that these FY 2004 grants are made before September 30, 2004, the 60-day intergovernmental review period has been waived.

5. *Funding Restrictions:* We specify limitations on indirect costs in 34 CFR 373.22. We reference additional regulations outlining funding restrictions in the *Applicable Regulations* section of this notice.

6. *Other Submission Requirements:* Instructions and requirements for the transmittal of applications by mail or by hand (including a courier service or commercial carrier) are in the application package for this competition.

Application Procedures

Note: Some of the procedures in these instructions for transmitting applications differ from those in EDGAR (34 CFR 75.102). Under the Administrative Procedure Act (5 U.S.C. 553) the Department generally offers interested parties the opportunity to comment on proposed regulations. However, these amendments make procedural changes only and do not establish new substantive policy. Therefore, under 5 U.S.C. 553(b)(A), the Secretary has determined that proposed rulemaking is not required.

Pilot Project for Electronic Submission of Applications: We are continuing to expand our pilot project for electronic submission of applications to include additional formula grant programs and additional discretionary grant competitions. Special Demonstration Programs—Model Transitional Rehabilitation Services for Youth and Young Adults With Disabilities—CFDA Number 84.235S is one of the programs included in the pilot project. If you are an applicant under Special Demonstration Programs—Model Transitional Rehabilitation Services for Youth and Young Adults With Disabilities, you may submit your application to us in either electronic or paper format.

The pilot project involves the use of the Electronic Grant Application System (e-Application). If you use e-Application, you will be entering data online while completing your application. You may not e-mail an electronic copy of a grant application to us. If you participate in this voluntary pilot project by submitting an application electronically, the data you enter online will be saved into a database. We request your participation in e-Application. We shall continue to evaluate its success and solicit suggestions for its improvement.

If you participate in e-Application, please note the following:

- Your participation is voluntary.
- When you enter the e-Application system, you will find information about its hours of operation. We strongly recommend that you do not wait until the application deadline date to initiate an e-Application package.
- You will not receive additional point value because you submit a grant application in electronic format, nor will we penalize you if you submit an application in paper format.
- You may submit all documents electronically, including the Application for Federal Education Assistance (ED 424), Budget Information—Non-Construction Programs (ED 524), and all necessary assurances and certifications.
- Your e-Application must comply with any page limit requirements described in this notice.
- After you electronically submit your application, you will receive an automatic acknowledgement, which will include a PR/Award number (an identifying number unique to your application).
- Within three working days after submitting your electronic application, fax a signed copy of the Application for Federal Education Assistance (ED 424) to the Application Control Center after following these steps:

1. Print ED 424 from e-Application.
2. The institution's Authorizing Representative must sign this form.
3. Place the PR/Award number in the upper right hand corner of the hard copy signature page of the ED 424.
4. Fax the signed ED 424 to the Application Control Center at (202) 245–6272.

- We may request that you give us original signatures on other forms at a later date.

Application Deadline Date Extension in Case of System Unavailability: If you elect to participate in the e-Application pilot for Special Demonstration Programs—Model Transitional Rehabilitation Services for Youth and Young Adults With Disabilities and you are prevented from submitting your application on the application deadline date because the e-Application system is unavailable, we will grant you an extension of one business day in order to transmit your application electronically, by mail, or by hand delivery. We will grant this extension if—

1. You are a registered user of e-Application, and you have initiated an e-Application for this competition; and
2. (a) The e-Application system is unavailable for 60 minutes or more between the hours of 8:30 a.m. and 3:30 p.m., Washington, DC time, on the application deadline date; or

(b) The e-Application system is unavailable for any period of time during the last hour of operation (that is, for any period of time between 3:30 p.m. and 4:30 p.m., Washington, DC time) on the application deadline date.

We must acknowledge and confirm these periods of unavailability before granting you an extension. To request this extension or to confirm our acknowledgement of any system unavailability, you may contact either (1) the person listed elsewhere in this notice under **FOR FURTHER INFORMATION CONTACT** (*see* VII. Agency Contact) or (2) the e-GRANTS help desk at 1–888–336–8930.

You may access the electronic grant application for Special Demonstration Programs—Model Transitional Rehabilitation Services for Youth and Young Adults With Disabilities at: *http://e-grants.ed.gov.*

V. Application Review Information

Selection Criteria: The selection criteria for this competition are in the application package.

VI. Award Administration Information

1. *Award Notices:* If your application is successful, we notify your U.S. Representative and U.S. Senators and send you a Grant Award Notification (GAN). We may also notify you informally.

If your application is not evaluated or not selected for funding, we notify you.

2. *Administrative and National Policy Requirements:* We identify administrative and national policy requirements in the application package and reference these and other requirements in the *Applicable Regulations* section of this notice.

We reference the regulations outlining the terms and conditions of an award in the *Applicable Regulations* section of this notice and include these and other specific conditions in the GAN. The GAN also incorporates your approved application as part of your binding commitments under the grant.

3. *Reporting:* At the end of your project period, you must submit a final performance report, including financial information, as directed by the Secretary. If you receive a multi-year award, you must submit an annual performance report that provides the most current performance and financial expenditure information as specified by the Secretary in 34 CFR 75.118.

4. *Performance Measures:* The Government Performance and Results Act (GPRA) of 1993 directs Federal departments and agencies to improve the effectiveness of their programs by engaging in strategic planning, setting outcome-related goals for programs, and measuring program results against those goals. Program officials must develop performance measures for all of their grant programs to assess their performance and effectiveness. The Rehabilitation Services Administration has established the following indicators to assess the effectiveness of mentoring models developed under this Special Demonstration Program:

- The percentage of youth and young adults with disabilities served by these projects who become enrolled in an institution of higher education.
- The percentage of youth and young adults with disabilities served by these

projects who achieve an employment outcome.

Each grantee must report on these indicators in its annual performance report. All grantees must submit annual performance reports documenting their performance and evaluation findings, as required by 34 CFR 75.590 and section 306 of the Rehabilitation Act of 1973, as amended.

VII. Agency Contact

FOR FURTHER INFORMATION CONTACT: Pedro Romero, U.S. Department of Education, 400 Maryland Avenue, SW., room 5029, Potomac Center Plaza, Washington, DC 20202–2800. Telephone: (202) 245–7645 or by e-mail: *pedro.romero@ed.gov*.

If you use a telecommunications device for the deaf, you may call the TDD number at (800) 437–0833.

Individuals with disabilities may obtain this document in an alternative format (*e.g.*, Braille, large print, audiotape, or computer diskette) on request to the program contact person listed in this section.

VIII. Other Information

Electronic Access to This Document: You may view this document, as well as all other documents of this Department published in the **Federal Register**, in text or Adobe Portable Document Format (PDF) on the Internet at the following site: *http://www.ed.gov/news/fedregister*.

To use PDF you must have Adobe Acrobat Reader, which is available free at this site. If you have questions about using PDF, call the U.S. Government Printing Office (GPO), toll free, at 1–888–293–6498; or in the Washington, DC, area at (202) 512–1530.

Note: The official version of this document is the document published in the **Federal Register**. Free Internet access to the official edition of the **Federal Register** and the Code of Federal Regulations is available on GPO Access at: *http://www.gpoaccess.gov/nara/index.html*.

Dated: July 9, 2004.

Troy R. Justesen,

Acting Deputy Assistant Secretary for Special Education and Rehabilitative Services.

[FR Doc. 04–16009 Filed 7–14–04; 8:45 am]

BILLING CODE 4000–01–P

DEPARTMENT OF ENERGY

Agency Information Collection Extension

AGENCY: Department of Energy.

ACTION: Submission for Office of Management and Budget (OMB) review; comment request.

SUMMARY: The Department of Energy (DOE) has submitted an information collection package to the OMB for extension under the provisions of the Paperwork Reduction Act of 1995. The package requests a three-year extension of its Certification of Compliance whereby a manufacturer or private labeler reports on and certifies its compliance with energy efficiency standards for certain 1 through 200 horsepower electric motors under Title 10 Code of Federal Regulations Part 431—Energy Efficiency Program for Certain Commercial and Industrial Equipment: Appendix A to Subpart G of Part 431: Certification of Compliance with Energy Efficiency Standards for Electric Motors, OMB Control Number 1910–5104. This information collection package provides a format for a manufacturer or private labeler to certify compliance with the energy efficiency standards prescribed at section 342(b)(1) of EPCA, 42 U.S.C. 6313(b)(1), and covers information necessary for the Department of Energy and United States Customs Service officials to facilitate voluntary compliance with and enforcement of the energy efficiency standards established for electric motors under EPCA sections 342(b)(1), 42 U.S.C. 6313(b)(1).

DATES: Comments regarding this collection must be received on or before August 16, 2004. If you anticipate that you will be submitting comments, but find it difficult to do so within the period of time allowed by this notice, please advise the OMB Desk Officer of your intention to make a submission as soon as possible. The Desk Officer may be telephoned at 202–395–7345.

ADDRESSES: Written comments should be sent to: DOE Desk Officer, Office of Information and Regulatory Affairs, Office of Management and Budget, New Executive Office Building, Room 10102, 735 17th Street, NW., Washington, DC 20503.

Comments should also be addressed to:

Susan L. Frey, Director, Records Management Division, IM–11/Germantown Bldg., Office of the Chief Information Officer, U.S. Department of Energy, 1000 Independence Ave SW., Washington, DC 20585–1290, and to

Mr. James Raba, U.S. Department of Energy, Building Technologies Program, Mailstop EE–2J, 1000 Independence Avenue, SW., Washington, DC 20585–0121 or by fax at (202) 586–4617 or by e-mail at *jim.raba@ee.doe.gov*.

FOR FURTHER INFORMATION CONTACT: Requests for additional information or copies of the information collection instrument and instructions should be directed to Susan L. Frey and Jim Raba as listed in **ADDRESSES** above.

SUPPLEMENTARY INFORMATION: This package contains: (*1*) *OMB No.:* 1910–5104; (*2*) *Package Title:* Title 10 Code of Federal Regulations Part 431—Energy Efficiency Program for Certain Commercial and Industrial Equipment: Appendix A to Subpart G of Part 431: Certification of Compliance with Energy Efficiency Standards for Electric Motors (*3*) *Purpose:* Regulations that, in part, (1) require the manufacturer or private labeler of any electric motor subject to energy efficiency standards prescribed under section 342 of EPCA, as amended, to establish, maintain and retain records of its test data and subsequent verification of any alternative efficiency determination method used under Part 431, and (2) preclude distribution in commerce of any basic model of an electric motor which is subject to an energy efficiency standard set forth under subpart G of Part 431, unless it has submitted a Compliance Certification to the Department according to the provisions under section 431.123 of Part 431, that the basic model meets the requirements of the applicable standard. This collection of information ensures compliance with the energy efficiency requirements for motors. (*4*) *Estimated Number of Respondents:* 56 (*5*) *Estimated Total Burden Hours:* 16,800 (*6*) *Number of Collections:* The package contains 1 information and/or recordkeeping requirement.

Statutory Authority: Part C of Title III of the Energy Policy and Conservation Act (EPCA) of 1975, Pub. L. 94–163, as amended.

Issued in Washington, DC on July 9, 2004.

Susan L. Frey,

Director, Records Management Division, Office of the Chief Information Officer.

[FR Doc. 04–16064 Filed 7–14–04; 8:45 am]

BILLING CODE 6450–01–P

DEPARTMENT OF ENERGY

[FE Docket No. PP–285]

Notice of Floodplain and Wetlands Involvement Sharyland Utilities, L.P.

AGENCY: Office of Fossil Energy, DOE.

ACTION: Notice of floodplain/wetland involvement.

SUMMARY: Sharyland Utilities, L.P. (Sharyland) has applied for a

Presidential permit to construct, operate, maintain, and connect an electric transmission line across the U.S. border with Mexico. The proposed action has the potential to impact on a floodplain/wetlands. In accordance with DOE regulations for compliance with floodplain/wetlands environmental review requirements (10 CFR Part 1022), a floodplain or wetlands assessment will be performed for the proposed action in a manner so as to avoid or minimize potential harm to or within potentially affected floodplain and wetlands.

DATES: Comments are due to the address below no later than July 30, 2004.

ADDRESSES: Written comments, questions about the proposed action, and requests to review the draft environmental assessment should be directed to: Ellen Russell, Office of Coal & Power Import/Export (FE–27), Office of Fossil Energy, U.S. Department of Energy, 1000 Independence Avenue, SW., Washington, DC 20585–0350. Fax: (202) 287–5736, or e-mail: *Ellen.Russell@hq.doe.gov.*

FOR FURTHER INFORMATION CONTACT: Ellen Russell (Program Office) 202–586–9624 or Richard Ahern (Program Attorney—NEPA) 202–586–3692.

For Further Information on General DOE Floodplain and Wetlands Environmental Review Requirements Contact: Carol M. Borgstrom, Director, Office of NEPA Policy and Compliance (EH–42), U.S. Department of Energy, 1000 Independence Avenue, SW., Washington, DC 20585–0119; Phone: 202–586–4600 or leave a message at 800–472–2756.

SUPPLEMENTARY INFORMATION: Under Executive Order 11988, Floodplain Management, and 10 CFR Part 1022, Compliance with Floodplain-Wetlands Environmental Review Requirements (*http://tis-nt.eh.doe.gov/nepa/tools/regulate/nepa_reg/1022/1022.htm*), notice is given that DOE is considering an application from Sharyland for a Presidential permit to construct, operate, maintain and connect a 138,000-kilovolt (138-kV) transmission lines across the U.S. border with Mexico in the vicinity of McAllen and Mission, Texas, to interconnect with similar facilities of the Comision Federal de Electricidad, the national electric utility of Mexico. Notice of filing of the Sharyland Presidential permit application appeared in the **Federal Register** on October 2, 2003 (68 FR 56825).

Before making a final decision on granting or denying a Presidential permit, DOE will prepare an environmental assessment (EA) to address the environmental impacts that would accrue from the proposed project and reasonable alternatives. The EA will be prepared in compliance with the National Environmental Policy Act of 1969 (NEPA) (42 U.S.C. 4321 *et seq.*). Because the proposed action has the potential to impact on a floodplain/wetlands, the EA will include a floodplain and wetlands assessment. A floodplain statement of findings will be included in any Finding of No Significant Impact (FONSI) that may be issued following completion of the EA. Copies of the EA and FONSI may be requested by telephone, facsimile, or e-mail from the address given above.

Issued in Washington, DC, on July 9, 2004.

Anthony J. Como,

Deputy Director, Electric Power Regulation, Office of Coal & Power Import/Export, Office of Fossil Energy.

[FR Doc. 04–16063 Filed 7–14–04; 8:45 am]

BILLING CODE 6450–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. RP04–388–000]

Algonquin Gas Transmission, LLC; Notice of Tariff Filing

July 9, 2004.

Take notice that on July 1, 2004, Algonquin Gas Transmission, LLC (Algonquin) tendered for filing as part of its FERC Gas Tariff, Fifth Revised Volume No. 1 and First Revised Volume No. 2, the revised tariff sheets listed on Appendix A to the filing, to become effective August 1, 2004.

Algonquin states that the purpose of this filing is to reduce the Gas Research Institute (GRI) surcharges to zero effective August 1, 2004 in compliance with the January 21, 1998, Stipulation and Agreement Concerning GRI Funding (Settlement) approved by the Commission in *Gas Research Institute,* 83 FERC ¶ 61,093 (1998), *order on reh'g,* 83 FERC ¶ 61,331 (1998).

Algonquin states that by letter dated May 25, 2004, GRI notified its member companies that actual collections under the funding surcharges approved by the Commission are projected to reach the approved amounts provided for in the Settlement by August 1, 2004.

Algonquin states that copies of the filing have been served upon all affected customers of Algonquin and interested state commissions.

Any person desiring to be heard or to protest said filing should file a motion to intervene or a protest with the Federal Energy Regulatory Commission, 888 First Street, NE., Washington, DC 20426, in accordance with Sections 385.214 or 385.211 of the Commission's Rules and Regulations. All such motions or protests must be filed in accordance with Section 154.210 of the Commission's Regulations. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceedings. Any person wishing to become a party must file a motion to intervene. This filing is available for review at the Commission in the Public Reference Room or may be viewed on the Commission's Web site at *http://www.ferc.gov* using the eLibrary. Enter the docket number excluding the last three digits in the docket number field to access the document. For assistance, please contact FERC Online Support at *FERCOnlineSupport@ferc.gov* or toll-free at (866) 208–3676, or TTY, contact (202) 502–8659. The Commission strongly encourages electronic filings. See, 18 CFR 385.2001(a)(1)(iii) and the instructions on the Commission's Web site under the e-Filing link.

Magalie R. Salas,

Secretary.

[FR Doc. E4–1579 Filed 7–14–04; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. CP04–369–000]

ANR Pipeline Company; Notice of Request Under Blanket Authorization

July 9, 2004.

Take notice that on July 1, 2004, ANR Pipeline Company (ANR), filed in Docket No. CP04–369–000 an application pursuant to ANR's blanket authority granted on September 30, 1982, in Docket No. CP82–480–000 for authorization to construct and operate a delivery point to serve an end-user, located in Rock County, Wisconsin, as more fully set forth in the request which is on file with the Commission and open to public inspection.

ANR proposes to construct, own and operate facilities necessary to deliver natural gas to serve Frito-Lay Inc.'s (Frito-Lay) plant in Beloit, Rock County, Wisconsin. ANR proposes to install a 4-inch hot tap on its 8-inch Line 2–210, which will serve as a bypass of the Wisconsin Power and Light Company, the local distribution company currently

providing natural gas service to Frito-Lay. ANR states that the proposed facilities will not have an impact upon ANR's peak day deliveries, and that it has sufficient capacity to render the proposed transportation service without detriment to its existing customers. In addition, ANR states that it will install the electronic gas measurement and communications on Frito-Lay's plant property located adjacent to ANR's existing pipeline right-of-way.

Any questions regarding this application should be directed to Jacques A. Hodges, Attorney, 9 E. Greenway Plaza, Houston, Texas 77046, at (832) 676–5509 or Thomas G. Joyce, Certificates Manager, at (832) 676–3299.

This filing is available for review at the Commission in the Public Reference Room or may be viewed on the Commission's Web site at *http://www.ferc.gov* using the ''e-Library'' link. Enter the docket number excluding the last three digits in the docket number field to access the document. For assistance, contact FERC Online Support at *FERCOnlineSupport@ferc.gov* or call toll-free, (866) 208–3676, or for TTY, (202) 502–8659. Comments, protests and interventions may be filed electronically via the Internet in lieu of paper. *See* 18 CFR 385.2001(a)(1)(iii) and the instructions on the Commission's Web site under the ''e-Filing'' link. The Commission strongly encourages intervenors to file electronically.

Any person or the Commission's staff may, within 45 days after issuance of the instant notice by the Commission, file pursuant to Rule 214 of the Commission's Procedural Rules (18 CFR 855.214) a motion to intervene or notice of intervention and pursuant to section 157.205 of the Regulations under the Natural Gas Act (18 CFR 157.205) a protest to the request. If no protest is filed within the time allowed, therefore, the proposed activity shall be deemed to be authorized effective the day after the time allowed for filing a protest. If a protest is filed and not withdrawn within 30 days after the time allowed for filing a protest, the instant request shall be treated as an application for authorization pursuant to section 7 of the Natural Gas Act.

Magalie R. Salas,

Secretary.

[FR Doc. E4–1587 Filed 7–14–04; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. RP04–381–000]

CenterPoint Energy Gas Transmission Company; Notice of Tariff Filing

July 9, 2004.

Take notice that on July 1, 2004, CenterPoint Energy Gas Transmission Company (CEGT) tendered for filing as part of its FERC Gas Tariff, Sixth Revised Volume No. 1, the following tariff sheets, to be effective on August 1, 2004:

First Revised Sheet No. 127
First Revised Sheet No. 128
First Revised Sheet No. 129
First Revised Sheet No. 558

CEGT states that the purpose of this filing is to provide additional flexibility and enhanced reliability to its no-notice transportation service.

Any person desiring to be heard or to protest said filing should file a motion to intervene or a protest with the Federal Energy Regulatory Commission, 888 First Street, NE., Washington, DC 20426, in accordance with sections 385.214 or 385.211 of the Commission's Rules and Regulations. All such motions or protests must be filed in accordance with section 154.210 of the Commission's Regulations. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceedings. Any person wishing to become a party must file a motion to intervene. This filing is available for review at the Commission in the Public Reference Room or may be viewed on the Commission's Web site at *http://www.ferc.gov* using the eLibrary. Enter the docket number excluding the last three digits in the docket number field to access the document. For assistance, please contact FERC Online Support at *FERCOnlineSupport@ferc.gov* or toll-free at (866) 208–3676, or TTY, contact (202) 502–8659. The Commission strongly encourages electronic filings. *See* 18 CFR 385.2001(a)(1)(iii) and the instructions on the Commission's Web site under the e-Filing link.

Magalie R. Salas,

Secretary.

[FR Doc. E4–1573 Filed 7–14–04; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. RP04–391–000]

Colorado Interstate Gas Company; Notice of Proposed Changes in FERC Gas Tariff

July 9, 2004.

Take notice that on July 2, 2004, Colorado Interstate Gas Company (CIG) tendered for filing as part of its FERC Gas Tariff, First Revised Volume No. 1, the following tariff sheets, to be effective August 5, 2004:

Seventeenth Revised Sheet No. 240
Ninth Revised Sheet No. 242
Fifth Revised Sheet No. 249
Seventh Revised Sheet No. 252
Eleventh Revised Sheet No. 256; and
Sixth Revised Sheet No. 258

CIG states that the tariff sheets remove the tariff provisions applicable to the temporary waiver of the maximum rate ceiling for capacity release transactions that expired on September 30, 2002.

Any person desiring to be heard or to protest said filing should file a motion to intervene or a protest with the Federal Energy Regulatory Commission, 888 First Street, NE., Washington, DC 20426, in accordance with Sections 385.214 or 385.211 of the Commission's Rules and Regulations. All such motions or protests must be filed in accordance with Section 154.210 of the Commission's Regulations. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceedings. Any person wishing to become a party must file a motion to intervene. This filing is available for review at the Commission in the Public Reference Room or may be viewed on the Commission's Web site at *http://www.ferc.gov* using the eLibrary. Enter the docket number excluding the last three digits in the docket number field to access the document. For assistance, please contact FERC Online Support at *FERCOnlineSupport@ferc.gov* or toll-free at (866) 208–3676, or TTY, contact (202) 502–8659. The Commission strongly encourages electronic filings. See, 18 CFR 385.2001(a)(1)(iii) and the instructions on the Commission's Web site under the e-Filing link.

Magalie R. Salas,

Secretary.

[FR Doc. E4–1582 Filed 7–14–04; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. PR04–6–000]

Cranberry Pipeline Corporation; Notice of Telephone Technical Conference

July 9, 2004.

Take notice that a technical conference by telephone will be held on Friday, July 30, 2004, at 10 a.m. (e.s.t.), at the Federal Energy Regulatory Commission, 888 First St., NE., Washington, DC 20426, Room 3M–3. A telephone number to participate will be provided at a later date.

The purpose of the teleconference is to address Cranberry Pipeline Corporation's (Cranberry) section 311 petition for rate approval filed on December 16, 2003. Cranberry should be prepared to discuss cost of service and rate design issues.

For more information regarding this teleconference, please contact Jerilyn Stanley, Office of General Counsel—Market, tariffs and Rate, at (202) 502–8370 or *jerilyn.stanley@ferc.gov*.

Magalie R. Salas,

Secretary.

[FR Doc. E4–1586 Filed 7–14–04; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. RP04–394–000]

Dominion Transmission, Inc.; Notice of Report of Overrun Charge/Penalty Revenue Distribution

July 9, 2004.

Take notice that on July 2, 2004, Dominion Transmission, Inc. (DTI) filed its annual report of overrun charge/penalty revenue distributions. DTI notes that section 41 of the General Terms and Conditions of DTI's FERC Gas Tariff, Crediting of Unauthorized Overrun Charge and Penalty Revenues, requires distribution of such charges and revenues to non-offending customers on June 30 of each year, and filing of the related report within 30 days of the distribution. DTI states that it distributed the penalty revenues to customers on June 30, 2004, and that included in the distribution was the overrun penalty revenue DTI received from offending customers for the 12-month period ending March 2004, with interest calculated through June 30, 2004.

DTI states that copies of the transmittal letter and summary workpapers were mailed to DTI's customers and to all interested state commissions.

Any person desiring to be heard or to protest said filing should file a motion to intervene or a protest with the Federal Energy Regulatory Commission, 888 First Street, NE., Washington, DC 20426, in accordance with sections 385.214 or 385.211 of the Commission's Rules and Regulations. All such motions or protests must be filed in on or before the date as indicated below. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceedings. Any person wishing to become a party must file a motion to intervene. This filing is available for review at the Commission in the Public Reference Room or may be viewed on the Commission's Web site at *http://www.ferc.gov* using the eLibrary. Enter the docket number excluding the last three digits in the docket number field to access the document. For assistance, please contact FERC Online Support at *FERCOnlineSupport@ferc.gov* or toll-free at (866) 208–3676, or TTY, contact (202) 502–8659. The Commission strongly encourages electronic filings. *See* 18 CFR 385.2001(a)(1)(iii) and the instructions on the Commission's Web site under the e-Filing link.

Intervention and Protest Date: July 16, 2004.

Magalie R. Salas,

Secretary.

[FR Doc. E4–1585 Filed 7–14–04; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. RP04–389–000]

East Tennessee Natural Gas, LLC; Notice of Tariff Filing

July 9, 2004.

Take notice that on July 1, 2004, East Tennessee Natural Gas, LLC (East Tennessee) tendered for filing as part of its FERC Gas Tariff, Third Revised Volume No. 1, the following revised tariff sheets to become effective August 1, 2004:

First Revised Sheet No. 20 and
First Revised Sheet No. 21

East Tennessee states that the purpose of this filing is to reduce the Gas Research Institute (GRI) surcharges to zero effective August 1, 2004 in compliance with the January 21, 1998, Stipulation and Agreement Concerning GRI Funding (Settlement) approved by the Commission in *Gas Research Institute,* 83 FERC ¶ 61,093 (1998), *order on reh'g,* 83 FERC ¶ 61,331 (1998).

East Tennessee states that by letter dated May 25, 2004, GRI notified its member companies that actual collections under the funding surcharges approved by the Commission are projected to reach the approved amounts provided for in the Settlement by August 1, 2004.

East Tennessee states that copies of the filing have been served upon all affected customers of East Tennessee and interested state commissions.

Any person desiring to be heard or to protest said filing should file a motion to intervene or a protest with the Federal Energy Regulatory Commission, 888 First Street, NE., Washington, DC 20426, in accordance with Sections 385.214 or 385.211 of the Commission's Rules and Regulations. All such motions or protests must be filed in accordance with Section 154.210 of the Commission's Regulations. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceedings. Any person wishing to become a party must file a motion to intervene. This filing is available for review at the Commission in the Public Reference Room or may be viewed on the Commission's Web site at *http://www.ferc.gov* using the eLibrary. Enter the docket number excluding the last three digits in the docket number field to access the document. For assistance, please contact FERC Online Support at *FERCOnlineSupport@ferc.gov* or toll-free at (866) 208–3676, or TTY, contact (202) 502–8659. The Commission strongly encourages electronic filings. See, 18 CFR 385.2001(a)(1)(iii) and the instructions on the Commission's Web site under the e-Filing link.

Magalie R. Salas,

Secretary.

[FR Doc. E4–1580 Filed 7–14–04; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. RP04–386–000]

Northwest Pipeline Corporation; Notice of Proposed Changes in FERC Gas Tariff

July 9, 2004.

Take notice that on July 1, 2004, Northwest Pipeline Corporation (Northwest) tendered for filing as part of its FERC Gas Tariff, Third Revised Volume No. 1, the following tariff sheets, to be effective August 1, 2004:

Eleventh Revised Sheet No. 200;
Third Revised Sheet No. 287;
Second Revised Sheet No. 288;
Second Revised Sheet No. 289;
First Revised Sheet No. 290;
First Revised Sheet No. 291; and
Third Revised Sheet No. 292.

Northwest states that the purpose of this filing is to revise Northwest's tariff to incorporate Northwest's existing business practices for soliciting permanent relinquishments of firm transportation capacity in reverse open seasons.

Northwest states that a copy of this filing has been served upon Northwest's customers and interested state regulatory commissions.

Any person desiring to be heard or to protest said filing should file a motion to intervene or a protest with the Federal Energy Regulatory Commission, 888 First Street, NE., Washington, DC 20426, in accordance with Sections 385.214 or 385.211 of the Commission's Rules and Regulations. All such motions or protests must be filed in accordance with Section 154.210 of the Commission's Regulations. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceedings. Any person wishing to become a party must file a motion to intervene. This filing is available for review at the Commission in the Public Reference Room or may be viewed on the Commission's Web site at *http://www.ferc.gov* using the eLibrary. Enter the docket number excluding the last three digits in the docket number field to access the document. For assistance, please contact FERC Online Support at *FERCOnlineSupport@ferc.gov* or toll-free at (866) 208–3676, or TTY, contact (202) 502–8659. The Commission strongly encourages electronic filings. See, 18 CFR 385.2001(a)(1)(iii) and the instructions on the Commission's Web site under the e-Filing link.

Magalie R. Salas,

Secretary.

[FR Doc. E4–1577 Filed 7–14–04; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. RP04–387–000]

Northwest Pipeline Corporation; Notice of Proposed Changes in FERC Gas Tariff

July 9, 2004.

Take notice that on July 1, 2004, Northwest Pipeline Corporation (Northwest) tendered for filing as part of its FERC Gas Tariff, the following tariff sheets, to be effective August 1, 2004.

Third Revised Volume No. 1
Twenty-Seventh Revised Sheet No. 5
Seventeenth Revised Sheet No. 5–A
Eleventh Revised Sheet No. 6
Ninth Revised Sheet No. 18
Fifth Revised Sheet No. 18–A
First Revised Sheet No. 21–A
Sixth Revised Sheet No. 31
Second Revised Sheet No. 127
Twelfth Revised Sheet No. 200
Fifth Revised Sheet No. 212
Third Revised Sheet No. 224
Eighth Revised Sheet No. 225
Fourth Revised Sheet No. 360
Original Volume No. 2; and
Thirtieth Revised Sheet No. 2.2

Northwest states that the purpose of this filing is to remove the GRI Adjustment surcharges from its tariff in accordance with the terms and conditions of the March 10, 1998 Settlement Agreement.

Northwest states that a copy of this filing has been served upon Northwest's customers and interested state regulatory commissions.

Any person desiring to be heard or to protest said filing should file a motion to intervene or a protest with the Federal Energy Regulatory Commission, 888 First Street, NE., Washington, DC 20426, in accordance with Sections 385.214 or 385.211 of the Commission's Rules and Regulations. All such motions or protests must be filed in accordance with Section 154.210 of the Commission's Regulations. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceedings. Any person wishing to become a party must file a motion to intervene. This filing is available for review at the Commission in the Public Reference Room or may be viewed on the Commission's Web site at *http://www.ferc.gov* using the eLibrary. Enter the docket number excluding the last three digits in the docket number field to access the document. For assistance, please contact FERC Online Support at *FERCOnlineSupport@ferc.gov* or toll-free at (866) 208–3676, or TTY, contact (202) 502–8659. The Commission strongly encourages electronic filings. See, 18 CFR 385.2001(a)(1)(iii) and the instructions on the Commission's Web site under the e-Filing link.

Magalie R. Salas,

Secretary.

[FR Doc. E4–1578 Filed 7–14–04; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. RP04–390–000]

OkTex Pipeline Company; Notice of Proposed Changes in FERC Gas Tariff

July 9, 2004.

Take notice that on July 2, 2004, OkTex Pipeline Company (OkTex), tendered for filing as part of its FERC Gas Tariff, Volume No. 1, the following tariff sheets, to become effective August 1, 2004:

Second Revised Sheet No. 5B
Sixth Revised Sheet No. 17; and
Original Sheet No. 40L

OkTex states that the purpose of the filing is to increase the fuel retention percentage (FRP) on its midstream system and to establish a tariff mechanism to allow OkTex to adjust the FRP annually in accordance with Section 154.403 of the Commission's Rules and Regulations. 18 CFR 154.403. This filing also corrects one scrivener's error in OkTex's tariff.

OkTex further states that copies of the filing have been mailed to all affected customers and state regulatory commissions.

Any person desiring to be heard or to protest said filing should file a motion to intervene or a protest with the Federal Energy Regulatory Commission, 888 First Street, NE., Washington, DC 20426, in accordance with Sections 385.214 or 385.211 of the Commission's Rules and Regulations. All such motions or protests must be filed in accordance with Section 154.210 of the Commission's Regulations. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceedings.

Any person wishing to become a party must file a motion to intervene. This filing is available for review at the Commission in the Public Reference Room or may be viewed on the Commission's Web site at *http://www.ferc.gov* using the eLibrary. Enter the docket number excluding the last three digits in the docket number field to access the document. For assistance, please contact FERC Online Support at *FERCOnlineSupport@ferc.gov* or toll-free at (866) 208–3676, or TTY, contact (202) 502–8659. The Commission strongly encourages electronic filings. See, 18 CFR 385.2001(a)(1)(iii) and the instructions on the Commission's Web site under the e-Filing link.

Magalie R. Salas,

Secretary.

[FR Doc. E4–1581 Filed 7–14–04; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. RP04–383–000]

Panhandle Eastern Pipe Line Company, LP; Notice of Proposed Changes in FERC Gas Tariff

July 9, 2004.

Take notice that on July 1, 2004, Panhandle Eastern Pipe Line Company, LP (Panhandle) filed as part of its FERC Gas Tariff, Third Revised Volume No. 1, the tariff sheets listed on Appendix A attached to the filing to become effective August 1, 2004.

Panhandle states that this filing is being made to discontinue the Gas Research Institute (GRI) surcharges effective August 1, 2004, in compliance with the January 21, 1998, Stipulation and Agreement Concerning GRI Funding (Settlement Agreement) approved by the Commission in *Gas Research Institute,* 83 FERC ¶ 61,093 (1998), *order on reh'g,* 83 FERC ¶ 61,331 (1998). In accordance with the Settlement Agreement, Panhandle will retain the voluntary contribution mechanism.

Panhandle states that copies of this filing are being served on all affected customers and applicable State regulatory agencies.

Any person desiring to be heard or to protest said filing should file a motion to intervene or a protest with the Federal Energy Regulatory Commission, 888 First Street, NE., Washington, DC 20426, in accordance with Sections 385.214 or 385.211 of the Commission's Rules and Regulations. All such motions or protests must be filed in accordance with Section 154.210 of the Commission's Regulations. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceedings. Any person wishing to become a party must file a motion to intervene. This filing is available for review at the Commission in the Public Reference Room or may be viewed on the Commission's Web site at *http://www.ferc.gov* using the eLibrary. Enter the docket number excluding the last three digits in the docket number field to access the document. For assistance, please contact FERC Online Support at *FERCOnlineSupport@ferc.gov* or toll-free at (866) 208–3676, or TTY, contact (202) 502–8659. The Commission strongly encourages electronic filings. See, 18 CFR 385.2001(a)(1)(iii) and the instructions on the Commission's Web site under the e-Filing link.

Magalie R. Salas,

Secretary.

[FR Doc. E4–1574 Filed 7–14–04; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. RP04–393–000]

Transcontinental Gas Pipe Line Corporation; Notice of Tariff Filing

July 9, 2004.

Take notice that on July 2, 2004, Transcontinental Gas Pipe Line Corporation (Transco) tendered for filing as part of its FERC Gas Tariff, Third Revised Volume No. 1, Sixth Revised Sheet No. 319, to become effective August 1, 2004.

Transco states that the purpose of the instant filing is to update this Delivery Point Entitlement (DPE) tariff sheet in accordance with the provisions of section 9.1(f) and 19.2(f) of the General Terms and Conditions of Transco's Third Revised Volume No. 1 Tariff.

Transco states that copies of the filing are being mailed to its affected customers and interested state commissions.

Any person desiring to be heard or to protest said filing should file a motion to intervene or a protest with the Federal Energy Regulatory Commission, 888 First Street, NE., Washington, DC 20426, in accordance with sections 385.214 or 385.211 of the Commission's Rules and Regulations. All such motions or protests must be filed in accordance with section 154.210 of the Commission's Regulations. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceedings. Any person wishing to become a party must file a motion to intervene. This filing is available for review at the Commission in the Public Reference Room or may be viewed on the Commission's Web site at *http://www.ferc.gov* using the eLibrary. Enter the docket number excluding the last three digits in the docket number field to access the document. For assistance, please contact FERC Online Support at *FERCOnlineSupport@ferc.gov* or toll-free at (866) 208–3676, or TTY, contact (202) 502–8659. The Commission strongly encourages electronic filings. *See* 18 CFR 385.2001(a)(1)(iii) and the instructions on the Commission's Web site under the e-Filing link.

Magalie R. Salas,

Secretary.

[FR Doc. E4–1584 Filed 7–14–04; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. RP04–384–000]

Trunkline LNG Company, LLC; Notice of Proposed Changes To FERC Gas Tariff

July 9, 2004.

Take notice that on July 1, 2004, Trunkline LNG Company, LLC (TLNG) tendered for filing as part of its FERC Gas Tariff, Second Revised Volume No. 1–A, the following tariff sheets, proposed to be effective August 1, 2004. Truckline states that the revised tariff sheets modify certain receipt and delivery specifications.

First Revised Sheet No. 74
First Revised Sheet No. 76, and
First Revised Sheet No. 106

TLNG states that copies of this filing are being served on all affected shippers, applicable state regulatory agencies and parties to this proceeding.

Any person desiring to be heard or to protest said filing should file a motion to intervene or a protest with the Federal Energy Regulatory Commission, 888 First Street, NE., Washington, DC 20426, in accordance with Sections 385.214 or 385.211 of the Commission's Rules and Regulations. All such motions or protests must be filed in accordance with Section 154.210 of the Commission's Regulations. Protests will

be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceedings. Any person wishing to become a party must file a motion to intervene. This filing is available for review at the Commission in the Public Reference Room or may be viewed on the Commission's Web site at *http://www.ferc.gov* using the eLibrary. Enter the docket number excluding the last three digits in the docket number field to access the document. For assistance, please contact FERC Online Support at *FERCOnlineSupport@ferc.gov* or toll-free at (866) 208–3676, or TTY, contact (202) 502–8659. The Commission strongly encourages electronic filings. See, 18 CFR 385.2001(a)(1)(iii) and the instructions on the Commission's Web site under the e-Filing link.

Magalie R. Salas,

Secretary.

[FR Doc. E4–1575 Filed 7–14–04; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. RP04–385–000]

Trunkline LNG Company, LLC; Notice of Proposed Changes in FERC Gas Tariff

July 9, 2004.

Take notice that on July 1, 2004, Trunkline LNG Company, LLC (TLNG) tendered for filing as part of its FERC Gas Tariff, Second Revised Volume No. 1–A, Second Revised Sheet No. 5, to be effective August 1, 2004.

TLNG states that this filing is made in accordance with section 19 (Fuel Reimbursement Adjustment) and Section 20 (Electric Power Cost Adjustment) of the General Terms and Conditions of TLNG's FERC Gas Tariff, Second Revised Volume No. 1–A.

TLNG states copies of this filing are being served on all affected customers and interested state regulatory agencies.

Any person desiring to be heard or to protest said filing should file a motion to intervene or a protest with the Federal Energy Regulatory Commission, 888 First Street, NE., Washington, DC 20426, in accordance with Sections 385.214 or 385.211 of the Commission's Rules and Regulations. All such motions or protests must be filed in accordance with Section 154.210 of the Commission's Regulations. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceedings. Any person wishing to become a party must file a motion to intervene. This filing is available for review at the Commission in the Public Reference Room or may be viewed on the Commission's Web site at *http://www.ferc.gov* using the eLibrary. Enter the docket number excluding the last three digits in the docket number field to access the document. For assistance, please contact FERC Online Support at *FERCOnlineSupport@ferc.gov* or toll-free at (866) 208–3676, or TTY, contact (202) 502–8659. The Commission strongly encourages electronic filings. See, 18 CFR 385.2001(a)(1)(iii) and the instructions on the Commission's Web site under the e-Filing link.

Magalie R. Salas,

Secretary.

[FR Doc. E4–1576 Filed 7–14–04; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. RP04–392–000]

Viking Gas Transmission Company; Notice of Proposed Changes in FERC Gas Tariff

July 9, 2004.

Take notice that on July 2, 2004, Viking Gas Transmission Company (Viking) tendered for filing as part of its FERC Gas Tariff, First Revised Volume No. 1, the following tariff sheets proposed to become effective August 1, 2004:

Seventh Revised Sheet No. 12
Second Revised Sheet No. 15L; and
Third Revised Sheet No. 97

Viking states that the purpose of this filing is to clarify that Viking may agree to differing levels in a Shipper's Transportation Quantity (TQ) and Maximum Daily Quantity (MDQ) for specified periods throughout the term of an agreement for service under its Rate Schedule(s) FT–A and FT–D provided it does so on a not unduly discriminatory basis.

Any person desiring to be heard or to protest said filing should file a motion to intervene or a protest with the Federal Energy Regulatory Commission, 888 First Street, NE., Washington, DC 20426, in accordance with Sections 385.214 or 385.211 of the Commission's Rules and Regulations. All such motions or protests must be filed in accordance with Section 154.210 of the Commission's Regulations. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceedings. Any person wishing to become a party must file a motion to intervene. This filing is available for review at the Commission in the Public Reference Room or may be viewed on the Commission's Web site at *http://www.ferc.gov* using the eLibrary. Enter the docket number excluding the last three digits in the docket number field to access the document. For assistance, please contact FERC Online Support at *FERCOnlineSupport@ferc.gov* or toll-free at (866) 208–3676, or TTY, contact (202) 502–8659. The Commission strongly encourages electronic filings. See, 18 CFR 385.2001(a)(1)(iii) and the instructions on the Commission's Web site under the e-Filing link.

Magalie R. Salas,

Secretary.

[FR Doc. E4–1583 Filed 7–14–04; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[P–2692–032]

Duke Power; Notice of Application Accepted for Filing and Soliciting Motions To Intervene and Protests

July 9, 2004.

Take notice that the following hydroelectric application has been filed with the Commission and is available for public inspection.

a. *Type of Application:* New major license.

b. *Project No.:* 2692–032.

c. *Date Filed:* February 20, 2004.

d. *Applicant:* Duke Power (Nantahala Area).

e. *Name of Project:* Nantahala Hydroelectric Project.

f. *Location:* On the Nantahala River and its tributaries, in Macon and Clay Counties, North Carolina. There are 41 acres of USFS managed land (Nantahala National Forest) within the Nantahala Project boundary.

g. *Filed Pursuant to:* Federal Power Act, 16 U.S.C. 791(a)–825(r).

h. *Applicant Contact:* John C. Wishon, Nantahala Area Relicensing Project Manager, Duke Power, 301 NP&L Loop, Franklin, NC 28734, (828) 369–4604, *jcwishon@duke-energy.com*.

i. *FERC Contact:* Carolyn Holsopple at (202) 502–6407 or *carolyn.holsopple@ferc.gov*.

j. *Deadline for Filing Motions to Intervene and Protests:* 60 days from the issuance date of this notice.

All documents (original and eight copies) should be filed with: Magalie R. Salas, Secretary, Federal Energy Regulatory Commission, 888 First Street, NE., Washington, DC 20426.

The Commission's Rules of Practice require all intervenors filing documents with the Commission to serve a copy of that document on each person on the official service list for the project. Further, if an intervenor files comments or documents with the Commission relating to the merits of an issue that may affect the responsibilities of a particular resource agency, they must also serve a copy of the document on that resource agency.

Motions to intervene and protests may be filed electronically via the Internet in lieu of paper. The Commission strongly encourages electronic filings. *See* 18 CFR 385.2001(a)(1)(iii) and the instructions on the Commission's Web site (*http://www.ferc.gov*) under the ''e-Filing'' link.

k. This application has been accepted for filing, but is not ready for environmental analysis at this time.

l. The existing Nantahala Project operates in a peaking mode and consists of the following features: (1) A 1,042-foot-long, 250-foot-tall earth and rockfill dam; (2) a spillway for the dam located at the east abutment; (3) a 1,605 acre reservoir, with a normal reservoir elevation of 3,012.2 feet National Geodetic Vertical Datum and a storage capacity of 38,336 acre-feet; (4) a reinforced concrete powerhouse containing one generating unit having an installed capacity of 42 megawatts (MW); (5) two diversions (Dicks Creek and Whiteoak Creek) that provide additional flow into the project; and (6) appurtenant facilities.

m. A copy of the application is available for review at the Commission in the Public Reference Room or may be viewed on the Commission's Web site at *http://www.ferc.gov* using the ''eLibrary'' link. Enter the docket number excluding the last three digits in the docket number field to access the document. For assistance, contact FERC Online Support at *FERCOnlineSupport@ferc.gov* or toll-free at 1–866–208–3676, or for TTY, (202) 502–8659. A copy is also available for inspection and reproduction at the address in item h above.

You may also register online at *http://www.ferc.gov/docs-filing/esubscription.asp* to be notified via email of new filings and issuances related to this or other pending projects. For assistance, contact FERC Online Support.

n. Anyone may submit a protest or a motion to intervene in accordance with the requirements of Rules of Practice and Procedure, 18 CFR 385.210, 385.211, and 385.214. In determining the appropriate action to take, the Commission will consider all protests filed, but only those who file a motion to intervene in accordance with the Commission's Rules may become a party to the proceeding. Any protests or motions to intervene must be received on or before the specified deadline date for the particular application.

When the application is ready for environmental analysis, the Commission will issue a public notice requesting comments, recommendations, terms and conditions, or prescriptions.

All filings must (1) bear in all capital letters the title ''PROTEST'' or ''MOTION TO INTERVENE''; (2) set forth in the heading the name of the applicant and the project number of the application to which the filing responds; (3) furnish the name, address, and telephone number of the person protesting or intervening; and (4) otherwise comply with the requirements of 18 CFR 385.2001 through 385.2005. Agencies may obtain copies of the application directly from the applicant. A copy of any protest or motion to intervene must be served upon each representative of the applicant specified in the particular application.

Magalie R. Salas,

Secretary.

[FR Doc. E4–1571 Filed 7–14–04; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Project No. 2710–035]

PPL Maine, LLC; Notice of Application Tendered for Filing With the Commission, Soliciting Additional Study Requests, Waiving Three Stage Consultation, and Establishing an Expedited Schedule for Relicensing and Deadline for Submission of Final Amendments

July 9, 2004.

Take notice that the following hydroelectric application has been filed with the Commission and is available for public inspection.

a. *Type of Application:* New major license.

b. *Project No.:* P–2710–035.

c. *Date filed:* June 25, 2004.

d. *Applicant:* PPL Maine, LLC.

e. *Name of Project:* Orono Hydroelectric Project.

f. *Location:* On the Stillwater Branch of the Penobscot River, near the town of Buxton, Penobscot County, Maine. This project does not occupy Federal lands.

g. *Filed Pursuant to:* Federal Power Act 16 U.S.C. 791(a)—825(r).

h. *Applicant Contact:* Mr. Scott Hall, PPL Maine, LLC, Davenport Street, PO Box 276, Milford, Maine 04461, (207) 827–5364.

i. *FERC Contact:* Ed Lee, *ed.lee@ferc.gov*, (202) 502–6082.

j. *Cooperating Agencies:* We are asking Federal, State, and local agencies and Indian tribes with jurisdiction and/or special expertise with respect to environmental issues to cooperate with us in the preparation of the environmental document. Agencies who would like to request cooperating status should follow the instructions for filing comments described in item k below.

k. Pursuant to section 4.32(b)(7) of 18 CFR of the Commission's regulations, if any resource agency, Indian tribe, or person believes that an additional scientific study should be conducted in order to form a factual basis for complete analysis of the application on its merits, the resource agency, Indian tribe, or person must file a request for the study with the Commission no later than 60 days from the application filing date, and serve a copy of the request on the applicant.

l. Deadline for filing additional study requests and requests for cooperating agency status: August 24, 2004.

All documents (original and eight copies) should be filled with: Magalie R. Salas, Secretary, Federal Energy Regulatory Commission, 888 First Street, NE., Washington, DC 20426

The Commission's Rules of Practice require all intervenors filing documents with the Commission to serve a copy of that document on each person on the official service list for the project. Further, if an intervenor files comments or documents with the Commission relating to the merits of an issue that may affect the responsibilities of a particular resource agency, they must also serve a copy of the document on that resource agency.

Additional study requests may be filed electronically via the Internet in lieu of paper. The Commission strongly encourages electronic filing. *See* 18 CFR 385.2001(a)(1)(iii) and the instructions on the Commission's Web site (*http://www.ferc.gov*) under the ''e-Filing'' link. After logging into the e-Filing system, select ''Comment on Filing'' from the

Filing Type Selection screen and continue with the filing process.''

m. The application is not ready for environmental analysis at this time.

n. *Project Description:* The Orono Hydroelectric Project consists of the following facilities: (1) The existing 1,174-foot-long by 15-foot-high dam with 2.4-foot-high flashboards; (2) a 2.3-mile-long reservoir, which has a surface area of 175 acres at the normal full pond elevation of 72.4 feet above mean sea level; (3) three new 10-foot-diameter penstocks; (4) a new restored powerhouse containing four generating units with total installed generating capacity of 2.3 megawatts (MW); and (4) appurtenant facilities. The restored project would have an average annual generation of 17,821 megawatt-hours. The dam and existing project facilities are owned by the applicant.

o. A copy of the application is on file with the Commission and is available for public inspection. This filing may also be viewed on the Web at *http://www.ferc.gov* using the ''eLibrary'' link. Enter the docket number, excluding the last three digits in the docket number filed to access the documents. For assistance, please contact FERC Online Support at *FERCOnlineSupport@ferc.gov* or toll free at (866) 208–3676 or for TTY, contact (202) 502–8659. A copy is also available for inspection and reproduction at the address in item h above.

p. You may also register online at *http://www.ferc.gov/esubscribenow.htm* to be notified via email of new filings and issuances related to this or other pending projects. For assistance, contact FERC Online Support.

q. With this notice, we are initiating consultation with the Maine State Historic Preservation Officer (SHPO), as required by § 106, National Historic Preservation Act, and the regulations of the Advisory Council on Historic Preservation, 36 CFR part 800.4.

r. *Procedural Schedule and Final Amendments:* We intend to waive the standard 3-stage consultation process (18 CFR 4.38), as requested by the applicant and agencies, because this application is filed in accordance with the ''Lower Penobscot River Multiparty Settlement Agreement''. We also intend to substitute the pre-filing consultation process that has occurred on this project for our standard National Environmental Policy Act scoping process. The application will be processed according to the following schedule. Commission staff propose to issue a single environmental assessment rather than issue a draft and final EA. Revisions to the schedule will be made as appropriate.

Issue Acceptance or Deficiency Letter—September 2004
Notice that application is ready for environmental analysis—September 2004
Notice of the availability of the EA—November 2004
Ready for Commission decision on the application—December 2004

Final amendments to the application must be filed with the Commission no later than 30 days from the issuance date of the notice of ready for environmental analysis.

Magalie R. Salas,

Secretary.

[FR Doc. E4–1572 Filed 7–14–04; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No.RP04–91–000]

Questar Pipeline Corporation; Notice of Technical Conference

July 9, 2004.

Take notice that a technical conference will be held on Thursday, July 29, 2004, from 10 a.m. to 4 p.m. (e.s.t.) at the Federal Energy Regulatory Commission, 888 First Street, NE., Washington, DC 20426. Arrangements will be made for parties to listen to the technical conference by telephone, with a telephone number to be provided later.

The purpose of the conference is to address Questar Pipeline Company's compliance filing made pursuant to the Commission's Order in RP04–91–000. Parties should be prepared to discuss issues arising from Questar's compliance filing regarding its fuel gas adjustment and lost and unaccounted for gas adjustment, and the Kastler dew point plant.

For more information regarding this conference, please contact Jerilyn Stanley, Office of General Counsel—Market, Tariffs and Rate at (202) 5028370 or *jerilyn.stanley@ferc.gov*.

Magalie R. Salas,

Secretary.

[FR Doc. E4–1570 Filed 7–14–04; 8:45 am]

BILLING CODE 6717–01–P

FEDERAL COMMUNICATIONS COMMISSION

[CC Docket No. 96–45; DA 04–1822]

Parties Are Invited To Comment on TracFone Wireless' Petition for Designation as an Eligible Telecommunications Carrier in the State of New York and Petition for Forbearance From Application of Section 214

AGENCY: Federal Communications Commission.

ACTION: Notice; solicitation of comments.

SUMMARY: In this document, interested parties are invited to comment on two petitions filed on June 8, 2004 by TracFone Wireless, Inc. (TracFone), a reseller of commercial mobile radio services (CMRS).

DATES: Comments are due on or before July 26, 2004. Reply comments are due on or before August 9, 2004.

ADDRESSES: Federal Communications Commission, 445 12th Street, SW., Washington, DC 20554. *See* **SUPPLEMENTARY INFORMATION** for further filing instructions.

FOR FURTHER INFORMATION CONTACT: Thomas Buckley, Attorney, Wireline Competition Bureau, Telecommunications Access Policy Division, (202) 418–7400, TTY (202) 418–0484.

SUPPLEMENTARY INFORMATION: This is a summary of public notice, CC Docket No. 96–45; DA 04–1822, released June 24, 2004. In this document, interested parties are invited to comment on two petitions filed on June 8, 2004 by TracFone Wireless, Inc. (TracFone), a reseller of commercial mobile radio services (CMRS). First, TracFone filed a petition for designation as an eligible telecommunications carrier (ETC) throughout the entire state of New York pursuant to section 214(e)(6) of the Communications Act, as amended (the Act). In addition, because TracFone provides CMRS only through resale, pursuant to section 10 of the Act, TracFone filed a petition requesting that the Commission forbear from applying the section 214(e)(1)(A) requirement that an ETC offer services supported by the universal service support mechanisms using either its own facilities or a combination of its own facilities and resale of another carrier's services.

Pursuant to §§ 1.415 and 1.419 of the Commission's rules, 47 CFR 1.415, 1.419, interested parties may file comments as follows: Comments are due on or before July 26, 2004, and

reply comments are due on or before August 9, 2004. Comments may be filed using the Commission's Electronic Comment Filing System (ECFS) or by filing paper copies. *See Electronic Filing of Documents in Rulemaking Proceedings,* 63 FR 24121, May 1, 1998. Parties should clearly specify in the caption of all filings the petition(s) to which the filing relates.

Comments filed through the ECFS can be sent as an electronic file via the Internet to *http://www.fcc.gov/e-file/ecfs.html*. Generally, only one copy of an electronic submission must be filed. If multiple docket or rulemaking numbers appear in the caption of this proceeding, however, commenters must transmit one electronic copy of the comments to each docket or rulemaking number referenced in the caption. In completing the transmittal screen, commenters should include their full name, U.S. Postal Service mailing address, and the applicable docket or rulemaking number. Parties may also submit an electronic comment by Internet e-mail. To get filing instructions for e-mail comments, commenters should send an e-mail to *ecfs@fcc.gov,* and should include the following words in the body of the message, ''get form <your e-mail address>.'' A sample form and directions will be sent in reply.

Parties who choose to file by paper must file an original and four copies of each filing. If more than one docket or rulemaking number appears in the caption of this proceeding, commenters must submit two additional copies for each additional docket or rulemaking number. Filings can be sent by hand or messenger delivery, by commercial overnight courier, or by first-class or overnight U.S. Postal Service mail (although we continue to experience delays in receiving U.S. Postal Service mail). The Commission's contractor, Natek, Inc., will receive hand-delivered or messenger-delivered paper filings for the Commission's Secretary at 236 Massachusetts Avenue, NE., Suite 110, Washington, DC 20002. The filing hours at this location are 8 a.m. to 7 p.m. All hand deliveries must be held together with rubber bands or fasteners. Any envelopes must be disposed of before entering the building. Commercial overnight mail (other than U.S. Postal Service Express Mail and Priority Mail) must be sent to 9300 East Hampton Drive, Capitol Heights, MD 20743. U.S. Postal Service first-class mail, Express Mail, and Priority Mail should be addressed to 445 12th Street, SW., Washington, DC 20554. All filings must be addressed to the Marlene H. Dortch, Office of the Secretary, Federal Communications Commission.

Parties who choose to file by paper also must send three paper copies of their filing to Sheryl Todd, Telecommunications Access Policy Division, Wireline Competition Bureau, Federal Communications Commission, 445 12th Street, SW., Room 5–B540, Washington, DC 20554. In addition, commenters must send diskette copies to the Commission's copy contractor, Best Copy and Printing, Inc. (BCPI), Portals II, 445 12th Street, SW., Room CY–B402, Washington, DC 20554.

Pursuant to § 1.1206 of the Commission's rules, 47 CFR 1.1206, this proceeding will be conducted as a permit-but-disclose proceeding in which ex parte communications are permitted subject to disclosure.

Federal Communications Commission.

Anita Cheng,

Assistant Chief, Wireline Competition Bureau Telecommunications Access Policy Division.

[FR Doc. 04–15988 Filed 7–14–04; 8:45 am]

BILLING CODE 6712–01–P

FEDERAL COMMUNICATIONS COMMISSION

Media Security and Reliability Council

AGENCY: Federal Communications Commission.

ACTION: Notice of meeting.

SUMMARY: In accordance with the Federal Advisory Committee Act, this notice advises interested persons of a meeting of the Media Security and Reliability Council (Council). The meeting will be held at the Federal Communications Commission in Washington, DC.

DATES: Tuesday, November 16, 2004 at 10 a.m. to 11:30 a.m.

ADDRESSES: Federal Communications Commission, 445 12th St. SW., Room TW–C305, Washington, DC 20554.

FOR FURTHER INFORMATION CONTACT: Barbara Kreisman at 202–418–1600 or TTY 202–418–7172.

SUPPLEMENTARY INFORMATION: The Council was established by the Federal Communications Commission to bring together leaders of the broadcast and multichannel video programming distribution industries and experts from consumer, public safety and other organizations to explore and recommend measures that would enhance the security and reliability of media facilities and services.

The Council will review the progress of its working groups. The Council may also discuss such other matters as come before it at the meeting. Members of the general public may attend the meeting. The Federal Communications Commission will attempt to accommodate as many people as possible. Admittance, however, will be limited to the seating available. The public may submit written comments before the meeting to Barbara Kreisman, the Commission's Designated Federal Officer for the Media Security and Reliability Council, by email *bkreisma@fcc.gov* or U.S. mail 2–A666, 445 12th St. SW., Washington, DC 20554. Real Audio and streaming video Access to the meeting will be available at *http://www.fcc.gov/.*

Reasonable accommodations for people with disabilities are available upon request. Include a description of the accommodation you will need including as much detail as you can. Also include a way we can contact you if we need more information. Please allow at least 5 days advance notice; last minute requests will be accepted, but may be impossible to fill. Send an e-mail to *fcc504@fcc.gov* or call the Consumer & Governmental Affairs Bureau: for sign language interpreters, CART and other reasonable accommodations: 202–418–0530 (voice), 202–418–0432 (TTY); for accessible format materials (Braille, large print, electronic files and audio format): 202–418–0531 (voice), 202–418–7365 (TTY).

Federal Communications Commission.

Barbara Kreisman,

Chief, Video Division, Media Bureau.

[FR Doc. 04–15989 Filed 7–14–04; 8:45 am]

BILLING CODE 6712–01–P

FEDERAL DEPOSIT INSURANCE CORPORATION

Notice of Agency Meeting

Pursuant to the provisions of the ''Government in the Sunshine Act'' (5 U.S.C. 552b), notice is hereby given that at 3:30 p.m. on Monday, July 19, 2004, the Federal Deposit Insurance Corporation's Board of Directors will meet in closed session, pursuant to section 552b(c)(2) of title 5, United States Code, to consider matters relating to the Corporation's corporate activities.

The meeting will be held in the Board Room on the sixth floor of the FDIC Building located at 550—17th Street, NW., Washington, DC

Requests for further information concerning the meeting may be directed to Ms. Valerie J. Best, Assistant Executive Secretary of the Corporation, at (202) 898–7043.

Dated: July 13, 2004.

Federal Deposit Insurance Corporation.

Valerie J. Best,

Assistant Executive Secretary.

[FR Doc. 04–16242 Filed 7–13–04; 3:16 pm]

BILLING CODE 6714–01–M

FEDERAL ELECTION COMMISSION

Sunshine Act Meeting

* * * * *

DATE AND TIME: *Tuesday, July 20, 2004 at 10 a.m.*

PLACE: 999 E Street, NW., Washington, DC

STATUS: This meeting will be closed to the public.

ITEMS TO BE DISCUSSED:

Compliance matters pursuant to 2 U.S.C. 437.

Audits conducted pursuant to 2 U.S.C. 437g, 438(b), and Title 26, U.S.C.

Matters concerning participation in civil actions or proceedings or arbitration.

Internal personnel rules and procedures or matters affecting a particular employee.

* * * * *

DATE AND TIME: *Thursday, July 22, 2004 at 10 a.m.*

PLACE: 999 E Street, NW., Washington, DC (ninth floor)

STATUS: This meeting will be open to the public.

ITEMS TO BE DISCUSSED:

Correction and Approval of Minutes.

Advisory Opinion 224–19: DollarVote by Andrew W. Mitchell, President.

Advisory Opinion 2004–21: On Time Systems, Inc. by Matthew L. Ginsberg, Chief Executive Officer.

Advisory Opinion 2004–22: The Honorable Doug Bereuter, U.S. House of Representatives.

Routine Administrative Matters.

CONTACT FOR FURTHER INFORMATION: Mr. Robert Biersack, Acting Press Officer, Telephone: (202) 694–1220.

Mary W. Dove,

Secretary of the Commission.

[FR Doc. 04–16183 Filed 7–13–04; 8:45 am]

BILLING CODE 6715–01–M

FEDERAL MARITIME COMMISSION

Notice of Agreements Filed

The Commission hereby gives notice of the filing of the following agreements under the Shipping Act of 1984. Interested parties can review or obtain copies of agreements at the Washington, DC offices of the Commission, 800 North Capitol Street, NW., Room 940. Interested parties may submit comments on an agreement to the Secretary, Federal Maritime Commission, Washington, DC 20573, within 10 days of the date this notice appears in the **Federal Register**.

Agreement No.: 011409–010.

Title: Transpacific Carrier Services, Inc. Agreement.

Parties: Westbound Transpacific Stabilization Agreement, Transpacific Space Utilization Agreement, Asia North America Eastbound Rate Agreement, Transpacific Stabilization Agreement and their constituent member lines: American President Lines, Ltd./APL Co. Pte. Ltd.; Evergreen Marine Corporation; Hanjin Shipping Co., Ltd.; Hapag-Lloyd Container Linie GmbH; Hyundai Merchant Marine Co., Ltd.; Kawasaki Kisen Kaisha, Ltd.; A.P. Moller-Maersk A/S; Mitsui O.S.K. Lines, Ltd.; Nippon Yusen Kaisha, Ltd.; Orient Overseas Container Line Limited; P&O Nedlloyd B.V.; P&O Nedlloyd Limited; Yang Ming Marine Transport Corp.; COSCO Container Lines Co., Ltd.; CMA CGM, S.A.; and China Shipping Container Lines Co., Ltd.

Filing Party: David F. Smith, Esq.; Sher & Blackwell; 1850 M Street, NW.; Suite 900; Washington, DC 20036.

Synopsis: The amendment removes the Westbound Transpacific Stabilization Agreement, the Transpacific Space Utilization Agreement, the Asia North America Eastbound Rate Agreement, and the Transpacific Stabilization Agreement as parties, leaving only individual ocean common carriers as parties to the subject agreement. The amendment also makes conforming changes to the agreement text.

Agreement No.: 011830–003.

Title: Indamex/APL Agreement.

Parties: American President Lines, Ltd.; APL Co. PTE Ltd.; CMA CGM, S.A.; Contship Containerlines; and the Shipping Corporation of India, Ltd.

Filing Parties: Paul M. Keane, Esq.; Cichanowicz, Callan, Keane, Vengrow & Textor, LLP, 61 Broadway; Suite 3000; New York, NY 10006–2802.

Synopsis: The amendment revises the deployment of vessels under the agreement and provides that affiliated companies of the parties may not subcharter slots to third parties without the prior consent of the other parties. The parties request expedited review.

Agreement No.: 011859–001.

Title: TMM/Hanjin Slot Charter Agreement.

Parties: TMM Lines, Limited, LLC., Hanjin Shipping Co., Ltd.

Filing Party: Wayne R. Rohde, Esq.; Sher & Blackwell; 1850 M Street, NW.; Suite 900; Washington, DC 20036.

Synopsis: The amendment adjusts Hanjin's present slot allocation from TMM and provides a range over which the allocation may vary.

Agreement No.: 200233–015.

Title: Packer Avenue Lease and Operating Agreement.

Parties: Philadelphia Regional Port Authority and Astro Holdings, Inc.

Filing Parties: Paul D. Coleman, Esq.; Hoppel, Mayer & Coleman; 1000 Connecticut Avenue, NW.; Washington, DC 20036.

Synopsis: The amendment establishes certain cargo fees for the handling of wheeled military cargo at the leased facility.

Agreement No.: 201157.

Title: USMX–ILA Master Contract.

Parties: United States Maritime Alliance, Ltd., on behalf of Management, and the International Longshoremen's Association, AFL–CIO.

Filing Parties: William M. Spelman, Lambos & Junge; 29 Broadway; 9th Floor; New York, NY 10006; Andre Mazzola, Gleason & Mathews, P.C.; 26 Broadway; 17th Floor; New York, NY 10004.

Synopsis: The agreement establishes the terms and conditions for a new Master Contract covering container and ro-ro operations between the parties and replaces the existing Master Contract. The term of this new contract will be from October 1, 2004, through and including September 30, 2010.

By Order of the Federal Maritime Commission.

Dated: July 9, 2004.

Karen V. Gregory,

Assistant Secretary.

[FR Doc. 04–15992 Filed 7–14–04; 8:45 am]

BILLING CODE 6730–01–P

FEDERAL MARITIME COMMISSION

Ocean Transportation Intermediary License Revocations

The Federal Maritime Commission hereby gives notice that the following Ocean Transportation Intermediary licenses have been revoked pursuant to section 19 of the Shipping Act of 1984 (46 U.S.C. app. 1718) and the regulations of the Commission pertaining to the licensing of Ocean Transportation Intermediaries, effective on the corresponding date shown below:

License Number: 017649NF.

Name: Access Freight Forwarders, Inc.

Address: 8220 NW 30th Terrace, Miami, FL 33122.

Date Revoked: June 30, 2004.
Reason: Failed to maintain valid bonds.

License Number: 000109F.
Name: Brittain International, Inc.
Address: 5845 East 14th Street, Brownsville, TX 78521.
Date Revoked: June 16, 2004.
Reason: Failed to maintain a valid bond.

License Number: 004486F.
Name: Challenge Warehousing, Inc.
Address: 1217 SW 1st Avenue, Fort Lauderdale, FL 33315.
Date Revoked: June 24, 2004.
Reason: Failed to maintain a valid bond.

License Number: 016201N.
Name: Delta Line International, Inc.
Address: 8353 NW 68th Street, Miami, FL 33166.
Date Revoked: June 26, 2004.
Reason: Failed to maintain a valid bond.

License Number: 014600N.
Name: Domar Enterprises, Inc. dba SGL Lines.
Address: 2534 Walnut Bend Lane, Suite C, Houston, TX 77042.
Date Revoked: June 27, 2004.
Reason: Failed to maintain a valid bond.

License Number: 017378N.
Name: E.M.W. Freight Forwarding Corp.
Address: 8601 NW 72nd Street, Miami, FL 33166.
Date Revoked: June 13, 2004.
Reason: Failed to maintain a valid bond.

License Number: 017507N.
Name: Eco Freight International Corporation.
Address: 5422 W. Rosecrans Avenue, Hawthorne, CA 90250.
Date Revoked: May 24, 2004.
Reason: Surrendered license voluntarily.

License Number: 003661F.
Name: Expressair Cargo, Inc.
Address: 11091 NW 27th Street, Miami, FL 33172.
Date Revoked: March 27, 2003.
Reason: Failed to maintain a valid bond.

License Number: 004638F.
Name: FITS Limited Liability Company.
Address: 1923 Lakeville Drive, Kingwood, TX 77339.
Date Revoked: June 9, 2004.
Reason: Failed to maintain a valid bond.

License Number: 015897NF.
Name: FTS International, Inc.
Address: 145–52 157th Street, Jamaica, NY 11434.
Date Revoked: October 4, 2003.
Reason: Failed to maintain valid bonds.

License Number: 004348NF.
Name: Freight Solutions International, LLC dba O.F.S. Line.
Address: 19900 South Vermont Avenue, Unit E, Torrance, CA 90502.
Date Revoked: April 8, 2004.
Reason: Surrendered license voluntarily.

License Number: 018130NF.
Name: Global Worldwide, Inc.
Address: 4808 Kroemer Road, Fort Wayne, IN 46818.
Date Revoked: June 24, 2004.
Reason: Surrendered license voluntarily.

License Number: 000087NF.
Name: J.E. Lowden & Co. dba Lightning Carriers.
Address: 275 Battery Street, Suite 400, San Francisco, CA 94111.
Date Revoked: June 17, 2004.
Reason: Failed to maintain valid bonds.

License Number: 016962N.
Name: Logistics Consultants Incorporated.
Address: 220 W. Ivy Avenue, Inglewood, CA 90202.
Date Revoked: April 8, 2004.
Reason: Surrendered license voluntarily.

License Number: 002957F.
Name: Michael J. Loprimo.
Address: 1078 Route 112, Suite 112, Port Jefferson, NY 11776.
Date Revoked: June 17, 2004.
Reason: Failed to maintain a vailid bond.

License Number: 002769F.
Name: New York Forwarding Services Inc.
Address: 330 Snyder Avenue, Berkeley Heights, NJ 07922.
Date Revoked: June 24, 2004.
Reason: Failed to maintain a valid bond.

License Number: 012757N.
Name: Ocean Conco Line, Inc.
Address: 39 Broadway, Suite 750, New York, NY 10004.
Date Revoked: June 20, 2004.
Reason: Failed to maintain a valid bond.

License Number: 003970F.
Name: Paula Solano dba Solano International.
Address: 347 Third Avenue, Bellmawr, NJ 08031.
Date Revoked: June 24, 2004.
Reason: Failed to maintain a valid bond.

License Number: 004163NF.
Name: Rimtech Int'l Transport.
Address: 20675 S. Western Avenue, Suite 206, Torrance, CA 90501.
Date Revoked: June 25, 2004.
Reason: Failed to maintain valid bonds.

License Number: 002466F.
Name: Seven Seas Consultants, Inc. dba Seven Seas Consultants.
Address: 3503 Cedar Knolls Drive, Suite A, Kingwood, TX 77339.
Date Revoked: June 11, 2004.
Reason: Failed to maintain a valid bond.

License Number: 003009NF.
Name: Super Freight International, Inc.
Address: 630 N. Edgewood Avenue, Wood Dale, IL 60191.
Date Revoked: June 11, 2004.
Reason: Failed to maintain a valid bond.

Sandra L. Kusumoto,
Director, Bureau of Consumer Complaints and Licensing.

[FR Doc. 04–15993 Filed 7–14–04; 8:45 am]
BILLING CODE 6730–01–P

FEDERAL MARITIME COMMISSION

Ocean Transportation Intermediary License; Rescission of Orders of Revocation

Notice is hereby given that the Order revoking the following license is being rescinded by the Federal Maritime Commission pursuant to sections 14 and 19 of the Shipping Act of 1984 (46 U.S.C. app. 1718) and the regulations of the Commission pertaining to the licensing of Ocean Transportation Intermediaries, 46 CFR part 515.

License No.	Name/address
018072N	Oceanair Freight International, Inc., 4280 NW 147th Terrace, Opalocka, FL 33054.

Sandra L. Kusumoto,
Director, Bureau of Consumer Complaints and Licensing.

[FR Doc. 04–15991 Filed 7–14–04; 8:45 am]
BILLING CODE 6730–01–P

FEDERAL MARITIME COMMISSION

Ocean Transportation Intermediary License; Applicants

Notice is hereby given that the following applicants have filed with the Federal Maritime Commission an application for license as a Non-Vessel Operating Common Carrier and Ocean Freight Forwarder—Ocean Transportation Intermediary pursuant to section 19 of the Shipping Act of 1984 as amended (46 U.S.C. app. 1718 and 46 CFR 515).

Persons knowing of any reason why the following applicants should not receive a license are requested to contact the Office of Transportation Intermediaries, Federal Maritime Commission, Washington, DC 20573.

Non-Vessel Operating Common Carrier Ocean Transportation Intermediary Applicants:

United Globe Cargo Inc., 2142 NW 99th Avenue, Miami, FL 33172. Officer: Constanza Nakamura, President (Qualifying Individual)

Moving Services International, LLC, 1590 NE 162nd Street, Suite 300, North Miami Beach, FL 33102. Officers: Bogdan Koszarycz, Manager (Qualifying Individual), Sharon Fachler, Manager

Sparrow Freight America, Inc., 550 E. Carson Plaza Drive, #108 Carson, CA 90746. Officers: Gregory Harold Pearson, Managing Director (Qualifying Individual), Wei Jin Ong, Director

Pacific Global Consolidators, Inc. 3770 W. Century Blvd., Inglewood, CA 90303. Officer: Raymond Tse, CEO (Qualifying Individual)

Non-Vessel Operating Common Carrier and Ocean Freight Forwarder Transportation Intermediary Applicants:

Caribika Inc. dba Caribika Marine Line, 1338 NW 78th Avenue, Miami, FL 33126. Officers: Angel M. Mederos, Vice President, Felipe Trauttmansdorff, President (Qualifying Individuals)

Sys-tems Logistix, Inc., 3850 Three Mile Lane NE, McMinnville, OR 97128. Officers: George Haddad, Global Ocean Director (Qualifying Individual), Brian Bauer, President

Cargo Specialists, Inc., 100 W. Imperial Highway, Suite J, El Segundo, CA 90245. Officers: Anthony Johnson, III, President (Qualifying Individual), Alma Laura Wratschko, Vice President

Tronex Logistics, Inc., 8460 NW 30th Terrace, Miami, FL 33122. Officer: Craig Robinson, President (Qualifying Individual)

Atlantic Pacific Global Logistics Ltd., P.O. Box 60, 10 Audrey Avenue, Oyster Bay, NY 11771. Officer: Ashley Russell Nichols, Managing Director (Qualifying Individual)

Sea-Line-Cargo, Inc., 250 North Avenue E., Elizabeth, NJ 07201. Officer: Edickson Burgos, President (Qualifying Individual)

Hanjin Logistics, Inc., 1211 W. 22nd Street, Suite 1000, Oak Brook, IL 60523. Officer: Michael J. Radak, Vice President (Qualifying Individual)

Ocean Freight Forwarder—Ocean Transportation Intermediary Applicants:

Contour Logistics, Inc., 2950 Turnpike Drive, Suite 19, Hatboro, PA 19040. Officer: Vera Sumetskaya, President (Qualifying Individual)

TRB Group, Inc. dba Unishippers, 2012 E. Phelps, Suite A, Springfield, MO 65802. Officers: Ray W. Crossland, Vice President (Qualifying Individual), Terrell R. Barkett, President

D&B Logistics, 3801 Beam Road, Suite A, Charlotte, NC 28217. Officers: Stephen G. Yohrling, Vice President (Qualifying Individual), David J. Kocan, President

Dated: July 9, 2004.

Karen V. Gregory,

Assistant Secretary.

[FR Doc. 04–15994 Filed 7–14–04; 8:45 am]

BILLING CODE 6730–01–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Centers for Disease Control and Prevention (CDC)

Safety and Occupational Health Study Section: Notice of Charter Renewal

This gives notice under the Federal Advisory Committee Act (Pub. L. 92–463) of October 6, 1972, that the Safety and Occupational Health Study Section, National Institute for Occupational Safety and Health (NIOSH), CDC, of the Department of Health and Human Services, has been renewed for a 2-year period extending through June 30, 2006.

For Further Information Contact: Price Connor, Ph.D., NIOSH Health Scientist, 1600 Clifton Road, NE, Mailstop E–20, Atlanta, Georgia 30333, telephone (404) 498–2511, fax (404) 498–2569.

The Director, Management Analysis and Services Office, has been delegated the authority to sign **Federal Register** notices pertaining to announcements of meetings and other committee management activities for both CDC and the Agency for Toxic Substances and Disease Registry.

Dated: July 8, 2004.

Alvin Hall,

Director, Management Analysis and Services Office, Centers for Disease Control and Prevention.

[FR Doc. 04–16028 Filed 7–14–04; 8:45 am]

BILLING CODE 4163–19–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Administration for Children and Families

Submission for OMB Review; Comment Request

Title: Case Plan Requirement, Section 422, 471(a)(16) and 475(5)(A) of the Social Security Act.

OMB No.: 0980–0140.

Description: Under section 471(a)(16) of title IV–E of the Social Security Act (the Act), to be eligible for payments, states must have an approved state plan that provides for the development of a case plan (as defined in section 475(1) for each child for which the state receives foster care maintenance payments, and that provides a case review system that meets the requirements in section 475(5) and 475(6). The case review system assures that each child has a case plan designed to achieve placement in a safe setting that is the least restrictive (most family-like) setting available and in close proximity to the child's parental home, consistent with the best interest and special needs of the child. Through these requirements, states also comply, in part, with title (IV–B), section 422(b) of the Act, which assures certain protections for children in foster care.

The case plan is a written document that provides a narrative description of the child-specific program of care. Federal regulations at 45 CFR 1356.21(g) and section 475(1) of the Act delineate the specific information that should be addressed in the case plan. The Administration for Children and Families (ACF) does not specify a recordkeeping format for the case plan nor does ACF require submission of the document to the Federal government. Case plan information is recorded in a format developed and maintained by the state child welfare agency.

Respondents: State title IV–B and title IV–E agencies

ANNUAL BURDEN ESTIMATES

Statement	Number of respondents	Number of responses per respondent	Average burden hours per response	Total burden hours
Case Plan	701,461	1	2.60	1,823,900
Estimated total annual burden hours				1,823,900

Additional Information: Copies of the proposed collection may be obtained by writing to the Administration for Children and Families, Office of Administration, Office of Information Services, 370 L'Enfant Promenade, SW., Washington, DC 20447, Attn: ACF Reports Clearance Officer. All requests should be identified by the title of the information collection. E-mail address: *grjohnson@acf.hhs.gov.*

OMB Comment: OMB is required to make a decision concerning the collection of information between 30 and 60 days after publication of this document in the **Federal Register**. Therefore, a comment is best assured of having its full effect if OMB receives it within 30 days of publication. Written comments and recommendations for the proposed information collection should be sent directly to the following: Office of Management and Budget, Paperwork Reduction Project, Attn: Desk Officer for ACF, e-mail address: *katherine_t._astrich@omb.eop.gov.*

Robert Sargis,

Reports Clearance Office.

[FR Doc. 04–16053 Filed 7–14–04; 8:45 am]

BILLING CODE 4184–01–M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Administration for Children and Families

Proposed Information Collection Activity; Comment Request

Proposed Projects

Title: State Plan for Child Support Under Title IV–D of the Social Security Act (OCSE–100 and OCSE–21–U4).

OMB No.: 0970–0017.

Description: The state plan serves as a contract between the Office of Child Support Enforcement and state IV–D agencies in outlining the activities the state will perform as required by law in order for States to receive Federal funds for child support enforcement.

Respondents: State IV–D Agencies.

ANNUAL BURDEN ESTIMATES

Instrument	Number of respondents	Number of responses per respondent	Average burden hours per response	Total burden hours
State Plan (OCSE–100)	54	6	.5	162
State plan transmittal (OCSE–21–U4)	54	6	.25	81
Estimated total annual burden hours				243

In compliance with the requirements of section 3506(c)(2)(A) of the Paperwork Reduction Act of 1995, the Administration for Children and Families is soliciting public comment on the specific aspects of the information collection described above. Copies of the proposed collection of information can be obtained and comments may be forwarded by writing to the Administration for Children and Families, Office of Administration, Office of Information Services, 370 L'Enfant Promenade, SW., Washington, DC 20447, Attn: ACF Reports Clearance Officer. E-mail address: *grjohnson@acf.hhs.gov.* All requests should be identified by the title of the information collection.

The Department specifically requests comments on: (a) Whether the proposed collection of information is necessary for the proper performance of the functions of the agency, including whether the information shall have practical utility; (b) the accuracy of the agency's estimate of the burden of the proposed collection of information; (c) the quality, utility, and clarity of the information to be collected; and (d) ways to minimize the burden of the collection of information on respondents, including through the use of automated collection techniques or other forms of information technology. Consideration will be given to comments and suggestions submitted within 60 days of this publication.

Dated: July 9, 2004.

Robert Sargis,

Reports Clearance Officer.

[FR Doc. 04–16054 Filed 7–14–04; 8:45 am]

BILLING CODE 4184–01–M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Food and Drug Administration

[Docket No. 2004D–0160]

Withdrawal of Guidance Document on Use of Unapproved Hormone Implants in Veal Calves

AGENCY: Food and Drug Administration, HHS.

ACTION: Notice; withdrawal.

SUMMARY: The Food and Drug Administration (FDA) is withdrawing a guidance for industry (#172) entitled ''Use of Unapproved Hormone Implants in Veal Calves.'' This guidance, which was issued on April 2, 2004, is being withdrawn because the policy contained within it only applied to veal calves presented for slaughter prior to June 6, 2004.

FOR FURTHER INFORMATION CONTACT: Gloria J. Dunnavan, Center for Veterinary Medicine (HFV–230), Food and Drug Administration, 7500 Standish Pl., Rockville, MD 20855, 301–827–1166, e-mail: *gloria.dunnavan@fda.gov*.

SUPPLEMENTARY INFORMATION: In the **Federal Register** dated April 8, 2004 (69 FR 18594), FDA announced the availability of a guidance for industry (#172) entitled ''Use of Unapproved Hormone Implants in Veal Calves.'' This guidance outlined special measures to ensure the safety of veal in response to the identified illegal use of unapproved hormone implants in veal calves. The policy outlined in this guidance only applied to veal calves presented for slaughter prior to June 6, 2004. Therefore, the guidance is no longer relevant and is being withdrawn. Because there is no approved animal drug application providing for the use of these implants in veal calves, such use is illegal. Under section 512 of the Federal Food, Drug, and Cosmetic Act (the act) (21 U.S.C. 360b), use of an unapproved new animal drug results in the drug being unsafe, and, therefore, the drugs are adulterated under section 501(a)(5) of the act (21 U.S.C. 351(a)(5)). In addition, food that bears or contains these drugs is adulterated under section 402(a)(2)(C)(ii) of the act (21 U.S.C. 342(a)(2)(C)(ii)).

Dated: July 9, 2004.

Jeffrey Shuren,

Assistant Commissioner for Policy.

[FR Doc. 04–16036 Filed 7–14–04; 8:45 am]

BILLING CODE 4160–01–S

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Health Resources and Services Administration

Advisory Commission of Childhood Vaccines Request for Nominations for Voting Members

AGENCY: Health Resources and Services Administration, HHS.

ACTION: Notice.

SUMMARY: The Health Resources and Services Administration (HRSA) is requesting nominations to fill three vacancies on the Advisory Commission on Childhood Vaccines (ACCV). The ACCV was established by Title XXI of the Public Health Service Act (the Act), as enacted by Public Law (Pub. L.) 99–660 and as subsequently amended, and advises the Secretary of Health and Human Services (the Secretary) on issues related to implementation of the National Vaccine Injury Compensation Program (VICP).

DATES: The agency must receive nominations on or before August 16, 2004.

ADDRESSES: All nominations are to be submitted to the Acting Director, Division of Vaccine Injury Compensation (DVIC), Special Programs Bureau, HRSA, Parklawn Building, Room 16C–17, 5600 Fishers Lane, Rockville, Maryland 20857.

FOR FURTHER INFORMATION CONTACT: Ms. Cheryl A. Lee, Principal Staff Liaison, Policy Analysis Branch, DVIC, at (301) 443–2124 or email: *CLee@hrsa.gov.*

SUPPLEMENTARY INFORMATION: Under the authorities that established the ACCV, the Federal Advisory Committee Act of October 6, 1972 (Pub. L. 92–463) and section 2119 of the Act, 42 U.S.C. 300aa–19, as added by Pub. L. 99–660 and amended, HRSA is requesting nominations for three voting members of the ACCV.

The ACCV advises the Secretary on the implementation of the VICP. The activities of the ACCV include: Recommending changes in the Vaccine Injury Table at its own initiative or as the result of the filing of a petition; advising the Secretary in implementing section 2127 regarding the need for childhood vaccination products that result in fewer or no significant adverse reactions; surveying Federal, State, and local programs and activities related to gathering information on injuries associated with the administration of childhood vaccines, including the adverse reaction reporting requirements of section 2125(b); advising the Secretary on the methods of obtaining, compiling, publishing, and using credible data related to the frequency and severity of adverse reactions associated with childhood vaccines; and recommending to the Director of the National Vaccine Program that vaccine safety research be conducted on various vaccine injuries.

The ACCV consists of nine voting members appointed by the Secretary as follows: Three health professionals, who are not employees of the United States Government and have expertise in the health care of children, the epidemiology, etiology and prevention of childhood diseases, and the adverse reactions associated with vaccines, at least two shall be pediatricians; three members from the general public, at least two shall be legal representatives (parents or guardians) of children who have suffered a vaccine-related injury or death; and three attorneys, at least one shall be an attorney whose specialty includes representation of persons who have suffered a vaccine-related injury or death, and one shall be an attorney whose specialty includes representation of vaccine manufacturers. In addition, the Director of the National Institutes of Health, the Assistant Secretary for Health, the Director of the Centers for Disease Control and Prevention, and the Commissioner of the Food and Drug Administration (or the designees of such officials) serve as nonvoting ex officio members.

Specifically, HRSA is requesting nominations for three voting members of the ACCV representing: (1) A pediatrician, who has expertise in the health care of children, the epidemiology, etiology, and prevention of childhood diseases; (2) an attorney whose specialty includes representation of persons who have suffered a vaccine-related injury or death; and (3) a legal representative (parent or guardian) of a child who has suffered a vaccine-related injury or death. Nominees will be invited to serve a 3-year term beginning January 1, 2005, and ending December 31, 2007.

Interested persons may nominate one or more qualified persons for membership on the ACCV. Nominations shall state that the nominee is willing to serve as a member of the ACCV and appears to have no conflict of interest that would preclude the ACCV membership. Potential candidates will be asked to provide detailed information concerning consultancies, research grants, or contracts to permit evaluation of possible sources of conflicts of interest. A curriculum vitae or resume should be submitted with the nomination.

The Department of Health and Human Services has special interest in assuring that women, minority groups, and the physically disabled are adequately represented on advisory committees; and therefore, extends particular encouragement to nominations for appropriately qualified female, minority, or disabled candidates.

Dated: July 8, 2004.

Elizabeth M. Duke,

Administrator.

[FR Doc. 04–16039 Filed 7–14–04; 8:45 am]

BILLING CODE 4165–15–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Health Resources and Services Administration

Mini-Preview Announcement Number: HRSA–04–095 Media-Based Grass Roots Efforts To Increase Solid Organ Donation

AGENCY: Health Resources and Services Administration, HHS.

ACTION: Correction.

SUMMARY: HRSA is modifying the announcement soliciting applications for HRSA's Media-Based Grassroots Efforts to Increase Solid Organ Donation based in part upon changes in the authorizing statute. In notice document 69 FR 21135, Tuesday, April 20, 2004, make the following corrections:

On page 21144, under ''Legislative Authority,'' replace ''Public Health Service Act, Section 371(a)(3), 42 U.S.C. 273(a)(3) as Amended.'' with ''section 377A(b) of the Public Health Service (PHS) Act, § 42 U.S.C. 274f–1(b).''

On page 21144, under ''Purpose'' line 49, replace ''80'' with ''75'' and in line 61, replace ''20'' with ''25'.

On page 21144, under ''Eligibility,'' lines 67, 68, 69, and 70, replace the language ''private not-for-profit entities eligible for funds under section 371(a)(3) of the Public Health Service Act (42 U.S.C. 273(a)(3).'' with ''domestic public and nonprofit private entities are eligible to apply as the applicant institution.''

On page 21144, under ''Application Availability,'' replace ''May 11, 2004.'' with ''June 17, 2004''.

On page 21144, under ''Letter of Intent Deadline:'' Delete this whole section.

On page 21144, under ''Application Deadline'' in the third column, line 19, replace ''June 25, 2004.'' with ''July 27, 2004''.

On page 21144, under ''Program Contact Person,'' in the third column, line 26, replace *judy.ceresa@hrsa.gov* with ''jceresa@hrsa.gov.''

Dated: July 9, 2004.

Tina Cheatham,

Director, Division of Policy Review and Coordination.

[FR Doc. 04–16038 Filed 7–14–04; 8:45 am]

BILLING CODE 4165–15–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Health Resources and Services Administration

Notice Regarding Subsection 224(o) of the Public Health Service Act (Volunteer Services Provided by Health Professionals at Free Clinics)

AGENCY: Health Resources and Services Administration, HHS.

ACTION: Notice whereby a person can determine when and the extent to which a volunteer health professional at a free clinic is deemed to be a Public Health Service employee.

SUMMARY: The Secretary of Health and Human Services (the ''Secretary'') provides the following notice regarding Section 224 of the Public Health Service Act (''the Act'') (42 U.S.C. 233), as amended by Public Law 104–191 (the Health Insurance Portability and Accountability Act of 1996 (''HIPAA'')). Section 194 of HIPAA amended the Act by adding subsection 224(o), which provides for liability protection for certain free clinic health professionals. This notice sets forth information whereby a person can determine when and the extent to which a volunteer health professional at a free clinic is deemed to be a Public Health Service employee.

FOR FURTHER INFORMATION CONTACT: For further information, contact Program Director, Federal Tort Claims Act Medical Malpractice Program, Division of Clinical Quality, Bureau of Primary Health Care, Health Resources and Services Administration, 4530 East West Highway, Bethesda, MD 20857 (Phone: 301–594–0818 or E-mail: *FreeClinicsFTCA@hrsa.gov*).

SUPPLEMENTARY INFORMATION:

I. Introduction

Section 224(a) of the Public Health Service (PHS) Act (42 U.S.C. 233(a)) provides that the remedy against the United States under the Federal Tort Claims Act (FTCA) resulting from the performance of medical, surgical, dental or related functions by any commissioned officer or employee of the PHS while acting within the scope of his office or employment, shall be exclusive of any other civil action or proceeding. Section 224(o) of the Act (added by Section 194 of the HIPPA) provides that under certain conditions, free clinic health care professionals shall be deemed to be employees of the PHS within the exclusive remedy provision of section 224(a). This notice is intended to provide information as to action that the Department of Health and Human Services (HHS) will take to implement the Act. Application instructions pertaining to the deeming process discussed below can be requested from the information contact listed above. Application instructions for free health clinic professionals to obtain PHS employment status for FTCA purposes (''FTCA deemed status'') are discussed below. Coverage under this program will be effective upon the receipt and approval of an application. Application forms and instructions may also be downloaded from HRSA's Bureau of Primary Health Care Web site at *http://www.bphc.gov* on or about September 1, 2004. HRSA will process applications as received.

II. Definition of Free Clinics and Free Clinic Health Professionals

Pursuant to the Act, HHS will provide free clinic health professionals with FTCA deemed status and FTCA coverage for medical malpractice claims only if it determines that the health care professional and the associated free clinic meet certain requirements.

(A) Under the Act, a *free clinic* is a health care facility operated by a nonprofit private entity that:

(1) In providing health care, does not accept reimbursement from any third-party payor (including reimbursement from any insurance policy, health plan, or Federal or State health benefits program);

(2) In providing health care, does not impose charges on patients to whom service is provided OR imposes charges on patients according to their ability to pay*;

(3) May accept patients' voluntary donations for health care service provision;

(4) Is licensed or certified to provide health services in accordance with applicable law.

(B) Under the Act, a *free clinic health professional:*

(1) Provides services to patients at a free clinic or through offsite programs or events carried out by a free clinic;

(2) Is sponsored by a free clinic (see section II(A) above);

(3) Provides a qualifying health service (i.e., any health care service required or authorized to be provided under Title XIX of the Social Security Act (42 U.S.C 1396 *et seq.*) without regard to whether the service is included in the plan submitted by the State in which the health care practitioner provides the service;

(4) Does not receive compensation for provided services from patients directly or from any third-party payor;

(5) May receive repayment from a free clinic for reasonable expenses incurred in service provision to patients;

(6) Is licensed or certified to provide health care services at the time of service provision in accordance with applicable law; and

(7) Provides patients with written notification before service provision of the extent to which his/her legal liability is limited pursuant to the Act if his/her associated free clinic has not already provided such notification. In the case of an emergency, the written notice shall be provided as soon thereafter as is practicable. If the patient is a minor or is otherwise legally incompetent, the written notice shall be provided to a legal guardian or other person with legal responsibility for the care of the patient.

*Free clinic entities may impose charges based on a patient's ability to pay, but in so doing negate the FTCA coverage of the volunteers for the specific services for which the clinic received payment.

III. FTCA Deeming Application

A free clinic may sponsor a free clinic health professional for FTCA deemed status and FTCA coverage for medical malpractice claims by submitting an application meeting the requirements of subsection 224(g)(1)(D) of the Act to the Secretary on behalf of the free clinic health professional. The application must be submitted in such form and manner as the Secretary shall prescribe. Moreover, the application must provide evidence that the free clinic:

(A) Has implemented appropriate policies and procedures to reduce the risk of medical malpractice and lawsuits arising out of any health or health related functions performed by the free clinic;

(B) Has reviewed and verified the credentials, references, claims history, fitness, professional review organization findings, and license status of its physicians and other licensed or certified health care practitioners, and, where necessary, has obtained its practitioners' permission to access this information;

(C) Has no history of a patient filing a medical malpractice claim against the U.S. Government pursuant to Section 224 for services provided by its free clinic health professionals OR has fully cooperated with the Attorney General in his/her preparation of a defense against any such medical malpractice claim against the U. S. Government. If the free clinic has a history of such a claim, it also must demonstrate that it has taken or will take any necessary steps to prevent such medical malpractice claims in the future; and

(D) Has pledged to fully cooperate with the Attorney General in providing information relating to an estimate of the number of expected medical malpractice claims for the following year as described in Section 224 of the Act.

Pursuant to subsection 224(g)(1)(E) of the Act, the Secretary will determine if the free clinic health professional meets the requirements for FTCA deemed status of the free clinic health professional. The Secretary will provide the free clinic with a notice of the effective date of the free clinic health professional's FTCA deemed status. A free clinic health professional's deemed status shall apply only to acts or omissions within the scope of the professional's duties at the free clinic occurring on or after the effective date specified in the notice.

This notice is not intended to constitute, and does not constitute, a comprehensive notice pertaining to any provision of the Act except to the extent that procedures pertaining to the implementation of the Act are described explicitly above.

Dated: July 8, 2004.

Elizabeth M. Duke,

Administrator.

[FR Doc. 04–16037 Filed 7–14–04; 8:45 am]

BILLING CODE 4165–15–P

DEPARTMENT OF HOMELAND SECURITY

Bureau of Customs and Border Protection

Cancellation of Customs Broker License Due to Death of the License Holder

AGENCY: Bureau of Customs and Border Protection, Department of Homeland Security.

ACTION: General notice.

SUMMARY: Notice is hereby given that, pursuant to title 19 of the Code of Federal Regulations at section 111.51(a), the following individual Customs broker license and any and all permits have been cancelled due to the death of the broker:

Name	License #	Port name
Emil F. Benja	02274	New York.

Dated: July 1, 2004.

Jayson P. Ahern,

Assistant Commissioner, Office of Field Operations.

[FR Doc. 04–16043 Filed 7–14–04; 8:45 am]

BILLING CODE 4820–02–P

DEPARTMENT OF HOMELAND SECURITY

Bureau of Customs and Border Protection

Retraction of Revocation Notice

AGENCY: Bureau of Customs and Border Protection, U.S. Department of Homeland Security.

ACTION: General notice.

SUMMARY: The below-identified Customs broker license was erroneously included in a list of revoked Customs broker licenses. *See* 69 FR 51512, dated October 9, 2001.

Name	License #	Port name
Miami Valley Worldwide, Inc	11297	Cleveland.

Customs broker license No. 11297 remains valid.

Dated: June 19, 2004.

Jason P. Ahern,

Assistant Commissioner, Office of Field Operations.

[FR Doc. 04–16041 Filed 7–14–04; 8:45 am]

BILLING CODE 4820–02–P

DEPARTMENT OF HOMELAND SECURITY

Bureau of Customs and Border Protection

Notice of Cancellation of Customs Broker Licenses

AGENCY: Bureau of Customs and Border Protection, U.S. Department of Homeland Security.

ACTION: General notice.

SUMMARY: Pursuant to section 641 of the Tariff Act of 1930, as amended, (19 U.S.C. 1641) and the Customs Regulations (19 CFR 111.51), the following Customs broker licenses are canceled with prejudice.

Name	License #	Issuing port
Steve Scully	05672	Los Angeles.
Martin E. Kerner, Jr	06013	New York.

Dated: July 1, 2004.

Jayson P. Ahern,

Assistant Commissioner, Office of Field Operations.

[FR Doc. 04–16042 Filed 7–14–04; 8:45 am]

BILLING CODE 4820–02–P

DEPARTMENT OF THE INTERIOR

Fish and Wildlife Service

Environmental Review of Proposed Incidental Take Permit and Habitat Conservation Plan for the Kaua'i Island Utility Cooperative, Hawai'i

AGENCY: Fish and Wildlife Service, Interior.

ACTION: Notice of intent; notice of scoping meeting.

SUMMARY: Pursuant to the National Environmental Policy Act the U.S. Fish and Wildlife Service (Service) is advising the public that we intend to gather information necessary to prepare, in coordination with the Hawai'i Department of Land and Natural Resources (DLNR), a joint Federal/State environmental document (Environmental Assessment or Environmental Impact Statement) for a proposed habitat conservation plan (HCP) that is being prepared by the Kaua'i Island Utility Cooperative (KIUC). The proposed HCP is being prepared under section 10(a) of the Federal Endangered Species Act (ESA) and section 195D–21 of the Hawai'i Revised Statutes (HRS). The KIUC intends to apply for an incidental take permit under the ESA and a State section 195D–21 incidental take license to authorize take of the federally endangered Hawaiian petrel (*Pterodroma sandwichensis*), the federally threatened Newell's shearwater (*Puffinus auricularis newelli*), and the band-rumped storm-petrel (*Oceanodroma castro*), a federal candidate that may become listed under the ESA during the term of the permit. We provide this notice to advise other Federal and State agencies, affected Tribes, and the public of our intentions; to announce the initiation of a 30-day public scoping period; and to request suggestions and information on the scope of issues and alternatives to be addressed in the environmental document. We invite oral or written comments from interested parties to ensure that the full range of issues related to the permit request is identified.

DATES: Oral and written comments will be accepted at a public scoping meeting held on Thursday, 16 September 2004 from 7–9 p.m. Written comments from all interested parties must be postmarked by August 16, 2004.

ADDRESSES: The public meeting will be held in Līhu'e, Kaua'i, at the Planning Commission Conference Room, Mo'ikeha Building, 4444 Rice Street, Lihue, Hawai'i. Information, written comments, or questions related to the NEPA process, or requests to be added to the mailing list, should be submitted to the Acting Field Supervisor, U.S. Fish and Wildlife Service, Pacific Islands Fish and Wildlife Office, PO Box 50088, Honolulu, Hawai'i 96850 (facsimile: 808–792–9581)

FOR FURTHER INFORMATION CONTACT: Arlene Pangelinan, Conservation Planning and Permits Program Leader (*see* **ADDRESSES**), or at 808–792–9400.

SUPPLEMENTARY INFORMATION:

Reasonable Accommodation

Persons needing reasonable accommodations in order to attend and participate in the public meeting should contact Jenness McBride, Fish and Wildlife Biologist, as soon as possible (*see* **ADDRESSES**), or at (808) 792–9400. To allow sufficient time to process requests, please call no later than 1 week before the public meeting. Information regarding this proposed action is available in alternative formats upon request.

Background

Federal agencies are required to conduct National Environmental Policy Act (NEPA) (42 U.S.C. 4321 *et seq.*) analyses of their proposed actions to determine if the actions may affect the human environment. The Service anticipates that the KIUC will request an ESA (16 U.S.C. 1531 *et seq.*) incidental take permit. Therefore, we are seeking public input on the scope of NEPA analysis required, including the range of reasonable alternatives and the associated impacts of those alternatives.

Section 9 of the ESA and its implementing Federal regulations prohibit the ''take'' of species listed as threatened or endangered. Take is defined under the ESA to include actions that harass, harm, pursue, hunt, shoot, wound, kill, trap, capture or collect listed animal species, or attempt to engage in such conduct (16 U.S.C. 1538). Harm includes significant habitat modification or degradation where it actually kills or injures listed wildlife by significantly impairing essential behavioral patterns, including breeding, feeding, and sheltering (50 CFR 17.3(c)). Under limited circumstances the Service may issue permits to take listed species incidental to, and not the purpose of, carrying out otherwise lawful activities. Section 10(a)(1)(B) of the ESA and regulations governing permits for threatened and endangered species at 50 CFR 17.32 contain provisions for issuing incidental take permits to non-Federal entities for the take of endangered and threatened species, provided the Service determines the following criteria are met: (1) The taking will be incidental; (2) the applicant will, to the maximum extent practicable, minimize and mitigate the impacts of such taking; (3)

the applicant will ensure that adequate funding for the HCP will be provided; (4) the taking will not appreciably reduce the likelihood of the survival and recovery of the species in the wild; and (5) any other measures that the Service may require as being necessary or appropriate for the purposes of the HCP will be met.

The KIUC is a not-for-profit, member-owned utility cooperative that generates and distributes electricity to the entire island of Kaua'i, Hawai'i. It intends to apply for a incidental take permit for three seabird species to be covered under an HCP, the endangered Hawaiian petrel, the threatened Newell's shearwater, and the band-rumped storm-petrel, a candidate for Federal listing. Species may be added or deleted during the course of the HCP's development based on further analysis, new information, agency consultation, and public comment.

These seabird species breed on the island of Kaua'i and feed on the open ocean. Thus they spend a large part of the year at sea. Adults generally return to their colonial nesting grounds in the interior mountains of Kaua'i beginning in March and April, and depart beginning in September. Fledglings (*i.e.*, young birds learning how to fly) make their first journey from nesting colony to the sea in the fall. Both adults and fledglings are known to occasionally collide with tall buildings, towers, powerlines, and other structures while flying at night between their nesting colonies and at-sea foraging areas. These birds, and particularly fledglings, are also attracted to bright lights. Disoriented birds are commonly observed circling repeatedly around exterior light sources until they fall exhausted to the ground or collide with structures.

The proposed HCP will cover the KIUC activities within all areas on Kaua'i where their facilities (*e.g.*, generating stations, powerlines, utility poles, and lights) are located, including operation, maintenance, and repair of these and other existing facilities, and construction, operation, maintenance, and repair of new facilities, during the term of the incidental take permit. Under the proposed HCP, the effects of covered activities associated with the KIUC facilities and operations are expected to be minimized and mitigated through a fully described conservation program. The biological goals of the proposed HCP are to avoid and minimize the incidental take of listed seabirds associated with construction, operation, maintenance, and repair of the KIUC structures and facilities; and to mitigate any unavoidable incidental take by improving seabird survival and breeding success. The proposed HCP will analyze minimizing the impacts of existing and future facilities and operations through a variety of measures, such as shielding lights (primarily streetlights mounted on utility poles), installing powerline marker balls, and implementing certain design features to reduce the risk of seabird collisions, such as installing powerlines below seabird flight altitudes, modifying powerline arrays, and placing certain powerline segments underground. The conservation program also will include efforts to rescue and rehabilitate birds grounded by collisions or light-attraction effects, monitor trends in the number and locations of downed seabirds, and conduct research needed to investigate information gaps that limit options for minimizing or mitigating incidental take.

Since November 2002, the KIUC has been working with the Service under a Memorandum of Agreement to implement certain interim conservation measures to benefit listed seabird species on Kaua'i, while the proposed HCP is being developed. The KIUC has shielded all streetlights on their utility poles to reduce light-attraction impacts, placed powerline marker balls where needed in areas of concentrated seabird flight paths, contributed funds to partially support the State's program to rescue and rehabilitate downed seabirds, and is initiating a nesting colony habitat improvement program in partnership with a third-party landowner for control of non-native mammalian predators. These measures and additional off-site mitigation activities will be included in the conservation program described in the proposed HCP.

Environmental Review

The Service and the DLNR are proposing to conduct an environmental review of the proposed issuance of Federal and State incidental take permits and the associated proposed HCP, and to prepare a joint Federal/State environmental document to assess potential impacts related to the ecosystem and the human environment. The KIUC, the Service, and the DLNR have selected Planning Solutions, Inc., of Honolulu, Hawai'i, to prepare the draft environmental document. The joint Federal/State document will be prepared in compliance with NEPA and the HRS Chapter 343. Although Planning Solutions, Inc., will prepare the environmental document, the Service will be responsible for the scope and content of the document for NEPA purposes, and the DLNR will be responsible for the scope and content of the document for the HRS Chapter 343 purposes.

The Service's proposed action is the issuance of an incidental take permit and implementation of the associated HCP, which will include measures to minimize and mitigate incidental take of the covered species.

The environmental review will consider the proposed action, no action (*i.e.*, no permit issuance), a reasonable range of alternatives, and the associated impacts of each alternative. A detailed description of the proposed action and alternatives (including no action) will be included in the environmental document. We anticipate that several alternatives will be developed, which may vary by the level of impacts caused by the proposed activities, their specific locations, and the conservation measures involved. Potential alternatives may include various methods of minimizing take through modifications of existing powerlines, structures, and lights; placing powerline segments underground; implementing design standards for new facilities; and developing and implementing various approaches for improving seabird survival and breeding success.

The environmental document also will identify potentially significant impacts on other biological resources, land use, air quality, water quality, mineral resources, water resources, cultural and archeological resources, socio-economic conditions, and other ecosystem and human environment issues that could result directly or indirectly from implementation of the proposed action and alternatives. For potentially significant impacts, the environmental document may identify mitigation measures to reduce those impacts to a level below significance. We anticipate the final environmental document will be completed by spring 2005.

The Service will conduct the proposed environmental review in accordance with the requirements of NEPA (42 U.S.C. 4321 *et seq.*), its implementing regulations (40 CFR parts 1500–1508), other appropriate Federal laws and regulations, and policies and procedures of the Service for compliance with those regulations. We are publishing this notice in accordance with Section 1501.7 of the NEPA regulations to obtain suggestions and information from other agencies and the public on the scope of issues and alternatives to be addressed in the environmental document. The primary purpose of the scoping process is to identify, rather than to debate, significant issues related to the

proposed action. We invite comments and suggestions from all interested parties to ensure that a reasonable range of alternatives is addressed and that all potentially significant issues are identified. All comments received, including names and addresses, will become part of the official administrative record and may be made available to the public. We will fully consider all comments received during the comment period.

Dated: June 14, 2004.

David J. Wesley,

Deputy Regional Director, Region 1, U.S. Fish and Wildlife Service.

[FR Doc. 04–16095 Filed 7–14–04; 8:45 am]

BILLING CODE 4310–55–P

DEPARTMENT OF THE INTERIOR

Bureau of Land Management

[MT–070–04–1010–PH]

Notice of Public Meeting, Western Montana Resource Advisory Council Meeting

AGENCY: Bureau of Land Management, Interior.

ACTION: Notice of public meeting.

SUMMARY: In accordance with the Federal Land Policy and Management Act (FLPMA) and the Federal Advisory Committee Act of 1972 (FACA), the U.S. Department of the Interior, Bureau of Land Management (BLM), Western Montana Resource Advisory Council will meet as indicated below.

DATES: A meeting will be held October 21, 2004 at the BLM Butte Field Office, 106 North Parkmont, Butte, Montana beginning at 9 a.m. The public comment period will begin at 11:30 a.m. and the meeting will adjourn at approximately 3 p.m.

SUPPLEMENTARY INFORMATION: The 15-member Council advises the Secretary of the Interior, through the Bureau of Land Management, on a variety of planning and management issues associated with public land management in western Montana. At the October 21 meeting, possible topics we plan to discuss include: Updates on the Dillon, Butte and Limestone Hills planning processes, big horn sheep habitat, a possible allotment stewardship proposal, and BLM law enforcement.

All meetings are open to the public. The public may present written comments to the Council. Each formal Council meeting will also have time allocated for hearing public comments. Depending on the number of persons wishing to comment and time available, the time for individual oral comments may be limited. Individuals who plan to attend and need special assistance, such as sign language interpretation, or other reasonable accommodations, should contact the BLM as provided below.

FOR FURTHER INFORMATION CONTACT: Marilyn Krause, Resource Advisory Council Coordinator, at the Butte Field Office, 106 North Parkmont, Butte, Montana 59701, telephone 406–533–7617 or Richard Hotaling, Field Manager, Butte Field Office, telephone 406–533–7600.

Dated: July 9, 2004.

Richard Hotaling,

Field Manager.

[FR Doc. 04–16096 Filed 7–14–04; 8:45 am]

BILLING CODE 4310–$$–P

DEPARTMENT OF THE INTERIOR

Minerals Management Service (MMS)

Outer Continental Shelf (OCS) Western Gulf of Mexico (GOM) Oil and Gas Lease Sale 192

AGENCY: Minerals Management Service, Interior.

ACTION: Final Notice of Sale (FNOS) 192.

SUMMARY: On August 18, 2004, MMS will open and publicly announce bids received for blocks offered in Western GOM Oil and Gas Lease Sale 192, pursuant to the OCS Lands Act (43 U.S.C. 1331–1356), as amended, and the regulations issued thereunder (30 CFR part 256).

The Final Notice of Sale 192 Package (FNOS 192 Package) contains information essential to bidders, and bidders are charged with the knowledge of the documents contained in the Package.

DATES: Public bid reading will begin at 9 a.m., Wednesday, August 18, 2004, in the Versailles Ballroom of the Hilton New Orleans Riverside Hotel, Two Poydras Street, New Orleans, Louisiana. All times referred to in this document are local New Orleans times, unless otherwise specified.

ADDRESSES: Bidders can obtain a FNOS 192 Package containing this Notice of Sale and several supporting and essential documents referenced herein from the MMS Gulf of Mexico Region Public Information Unit, 1201 Elmwood Park Boulevard, New Orleans, Louisiana 70123–2394, (504) 736–2519 or (800) 200–GULF, or via the MMS Internet Web site at *www.mms.gov.*

Filing of Bids: Bidders must submit sealed bids to the Regional Director (RD), MMS Gulf of Mexico Region, 1201 Elmwood Park Boulevard, New Orleans, Louisiana 70123–2394, between 8 a.m. and 4 p.m. on normal working days, and from 8 a.m. to the Bid Submission Deadline of 10 a.m. on Tuesday, August 17, 2004. If bids are mailed, please address the envelope containing all of the sealed bids as follows:

Attention: Supervisor, Sales and Support Unit (MS 5422), Leasing Activities Section, MMS Gulf of Mexico Region 1201 Elmwood Park Boulevard, New Orleans, Louisiana 70123–2394.

Contains Sealed Bids for Oil and Gas Lease Sale 192

Please Deliver to Ms. Jane Burrell Johnson, Room 311, Immediately.

Please note: Bidders mailing their bid(s) are advised to call Ms. Jane Burrell Johnson (504) 736–2811 immediately after putting their bid(s) in the mail.

If the RD receives bids later than the time and date specified above, he will return those bids unopened to bidders. Bidders may not modify or withdraw their bids unless the RD receives a written modification or written withdrawal request prior to 10 a.m. on Tuesday, August 17, 2004. Should an unexpected event such as flooding or travel restrictions be significantly disruptive to bid submission, the MMS Gulf of Mexico Region may extend the Bid Submission Deadline. Bidders may call (504) 736–0557 for information about the possible extension of the Bid Submission Deadline due to such an event.

Areas Offered for Leasing: The MMS is offering for leasing all blocks and partial blocks listed in the document ''Blocks Available for Leasing in Western GOM Oil and Gas Lease Sale 192'' included in the FNOS 192 Package. All of these blocks are shown on the following Leasing Maps and Official Protraction Diagrams (which may be purchased from the MMS Gulf of Mexico Region Public Information Unit):

Outer Continental Shelf Leasing Maps—Texas Map Numbers 1 through 8 (These 16 maps sell for $2.00 each.)

TX1 South Padre Island Area (revised November 1, 2000)
TX1A South Padre Island Area, East Addition (revised November 1, 2000)
TX2 North Padre Island Area (revised November 1, 2000)
TX2A North Padre Island Area, East Addition (revised November 1, 2000)
TX3 Mustang Island Area (revised November 1, 2000)

TX3A Mustang Island Area, East Addition (revised September 3, 2002)
TX4 Matagorda Island Area (revised November 1, 2000)
TX5 Brazos Area (revised November 1, 2000)
TX5B Brazos Area, South Addition (revised November 1, 2000)
TX6 Galveston Area (revised November 1, 2000)
TX6A Galveston Area, South Addition (revised November 1, 2000)
TX7 High Island Area (revised November 1, 2000)
TX7A High Island Area, East Addition (revised November 1, 2000)
TX7B High Island Area, South Addition (revised November 1, 2000)
TX7C High Island Area, East Addition, South Extension (revised November 1, 2000)
TX8 Sabine Pass Area (revised November 1, 2000)

Outer Continental Shelf Official Protraction Diagrams (These 7 diagrams sell for $2.00 each.)

NG14–03 Corpus Christi (revised November 1, 2000)
NG14–06 Port Isabel (revised November 1, 2000)
NG15–01 East Breaks (revised November 1, 2000)
NG15–02 Garden Banks (revised November 1, 2000)
NG15–04 Alaminos Canyon (revised November 1, 2000)
NG15–05 Keathley Canyon (revised November 1, 2000)
NG15–08 Sigsbee Escarpment (revised November 1, 2000)

Please note: A CD–ROM (in ARC/INFO and Acrobat (.pdf) format) containing all of the GOM Leasing Maps and Official Protraction Diagrams, except for those not yet converted to digital format, is available from the MMS Gulf of Mexico Region Public Information Unit for a price of $15. For the current status of all Western GOM Leasing Maps and Official Protraction Diagrams, please refer to 66 FR 28002 (published May 21, 2001) and 67 FR 60701 (published September 26, 2002). In addition, Supplemental Official OCS Block Diagrams (SOBDs) for these blocks are available for blocks which contain the ''U.S. 200 Nautical Mile Limit'' line and the ''U.S.-Mexico Maritime Boundary'' line. These SOBDs are also available from the MMS Gulf of Mexico Region Public Information Unit. For additional information, please call Mr. Joe Perryman (504) 736–2791.

All blocks are shown on these Leasing Maps and Official Protraction Diagrams. The available Federal acreage of all whole and partial blocks in this lease sale is shown in the document ''List of Blocks Available for Leasing in Lease Sale 192'' included in the FNOS 192 Package. Some of these blocks may be partially leased or deferred, or transected by administrative lines such as the Federal/State jurisdictional line. A bid on a block must include all of the available Federal acreage of that block. Also, information on the unleased portions of such blocks is found in the document ''Western Gulf of Mexico Lease Sale 192—Unleased Split Blocks and Available Unleased Acreage of Blocks with Aliquots and Irregular Portions Under Lease or Deferred,'' included in the FNOS 192 Package.

Areas not Available for Leasing: The following whole and partial blocks are not offered for lease in this lease sale:

Whole blocks and portions of blocks which lie within the boundaries of the Flower Garden Banks National Marine Sanctuary at the East and West Flower Garden Banks and Stetson Bank (the following list includes all blocks affected by the Sanctuary boundaries):

High Island, East Addition, South Extension (Area TX7C)

Whole Blocks: A–375, A–398
Portions of Blocks: A–366, A–367, A–374, A–383, A–384, A–385, A–388, A–389, A–397, A–399, A–401

High Island, South Addition (Area TX7B)

Portions of Blocks: A–502, A–513

Garden Banks (Area NG15–02)

Portions of Blocks: 134, 135

Whole blocks and portions of blocks which lie within the 1.4 nautical mile buffer zone north of the continental shelf boundary between the United States and Mexico:

Keathley Canyon (Area NG15–05)

Portions of Blocks: 978 through 980

Sigsbee Escarpment (Area NG15–08)

Whole Blocks: 11, 57, 103, 148, 149, 194, 239, 284, 331 through 341
Portions of Blocks: 12 through 14, 58 through 60, 104 through 106, 150, 151, 195, 196, 240, 241, 285 through 298, 342 through 349.

Statutes and Regulations: Each lease issued in this lease sale is subject to the OCS Lands Act of August 7, 1953, 67 Stat. 462; 43 U.S.C. 1331 *et seq.,* as amended (92 Stat. 629), hereinafter called ''the Act''; all regulations issued pursuant to the Act and in existence upon the Effective Date of the lease; all regulations issued pursuant to the statute in the future which provide for the prevention of waste and conservation of the natural resources of the OCS and the protection of correlative rights therein; and all other applicable statutes and regulations.

Lease Terms and Conditions: Initial period, extensions of initial period, minimum bonus bid amount, rental rates, royalty rates, minimum royalty, and royalty suspension areas are shown on the map ''Lease Terms and Economic Conditions, Lease Sale 192, Final'' for leases resulting from this lease sale:

Initial Period: 5 years for blocks in water depths of less than 400 meters; 8 years for blocks in water depths of 400 to 799 meters; and 10 years for blocks in water depths of 800 meters or deeper;

Extensions of Initial Period: Extensions may be granted for eligible leases on blocks in water depths less than 400 meters as specified in NTL No. 2000-G22;

Minimum Bonus Bid Amount: A bonus bid will not be considered for acceptance unless it provides for a cash bonus in the amount of $25 or more per acre or fraction thereof for blocks in water depths of less than 400 meters or $37.50 or more per acre or fraction thereof for blocks in water depths of 400 meters or deeper. Please refer to the ''List of Blocks Available for Leasing in Western GOM Oil and Gas Lease Sale 192'';

Rental Rates: $5 per acre or fraction thereof for blocks in water depths of less than 200 meters and $7.50 per acre or fraction thereof for blocks in water depths of 200 meters or deeper, to be paid on or before the first day of each lease year until a discovery in paying quantities of oil or gas, then at the expiration of each lease year until the start of royalty-bearing production;

Royalty Rates: 16⅔ percent royalty rate for blocks in water depths of less than 400 meters and a 12½ percent royalty rate for blocks in water depths of 400 meters or deeper, except during periods of royalty suspension, to be paid monthly on the last day of the month next following the month during which the production is obtained;

Minimum Royalty: After the start of royalty-bearing production: $5 per acre or fraction thereof per year for blocks in water depths of less than 200 meters and $7.50 per acre or fraction thereof per year for blocks in water depths of 200 meters or deeper, to be paid at the expiration of each lease year with credit applied for actual royalty paid during the lease year. If actual royalty paid exceeds the minimum royalty requirement, then no minimum royalty payment is due;

Royalty Suspension Areas: Royalty suspension, subject to gas price thresholds, will apply to blocks in water depths less than 200 meters where deep gas (typically 15,000 feet or greater subsea) is drilled and commences production before May 3, 2009. In

addition, subject to both oil and gas price thresholds, royalty suspension will apply in water depths of 400 meters or deeper. See the map ''Lease Terms and Economic Conditions, Lease Sale 192, Final'' for specific areas and the ''Royalty Suspension Provisions, Lease Sale 192, Final'' document contained in the FNOS 192 Package for specific details regarding royalty suspension eligibility, applicable price thresholds and implementation.

Lease Stipulations: The map ''Stipulations and Deferred Blocks, Lease Sale 192, Final,'' depicts the blocks on which one or more of five lease stipulations apply: (1) Topographic Features; (2) Military Areas; (3) Operations in the Naval Mine Warfare Area; (4) Law of the Sea Convention Royalty Payment; and (5) Protected Species. The texts of the lease stipulations are contained in the document ''Lease Stipulations for Oil and Gas Lease Sale 192, Final'' included in the FNOS 192 Package. Please note also that the document ''Blocks Available for Leasing in Western GOM Oil and Gas Lease Sale 192'' identifies for each block listed the lease stipulations applicable to that block.

Information to Lessees: The FNOS 192 Package contains an ''Information To Lessees'' document which provides detailed information on certain specific issues pertaining to this oil and gas lease sale.

Method of Bidding: For each block bid upon, a bidder must submit a separate signed bid in a sealed envelope labeled ''Sealed Bid for Oil and Gas Lease Sale 192, not to be opened until 9 a.m., Wednesday, August 18, 2004.'' The total amount of the bid must be in a whole dollar amount; any cent amount above the whole dollar will be ignored by the MMS. Details of the information required on the bid(s) and the bid envelope(s) are specified in the document ''Bid Form and Envelope'' contained in the FNOS 192 Package.

The MMS published in the **Federal Register** a list of restricted joint bidders, which applies to this lease sale, at 69 FR 18105 on April 6, 2004. Bidders must execute all documents in conformance with signatory authorizations on file in the MMS Gulf of Mexico Region Adjudication Unit. Partnerships also must submit or have on file a list of signatories authorized to bind the partnership. Bidders submitting joint bids must include on the bid form the proportionate interest of each participating bidder, stated as a percentage, using a maximum of five decimal places, *e.g.,* 33.33333 percent. The MMS may require bidders to submit other documents in accordance with 30 CFR 256.46. The MMS warns bidders against violation of 18 U.S.C. 1860 prohibiting unlawful combination or intimidation of bidders. Bidders are advised that the MMS considers the signed bid to be a legally binding obligation on the part of the bidder(s) to comply with all applicable regulations, including payment of the one-fifth bonus bid amount on all high bids. A statement to this effect must be included on each bid (*see* the document ''Bid Form and Envelope'' contained in the FNOS 192 Package).

Rounding: The following procedure must be used to calculate the minimum bonus bid, annual rental, and minimum royalty: Round up to the next whole dollar amount if the calculation results in a decimal figure (*see* next paragraph).

Please note: The minimum bonus bid calculation, including all rounding, is shown in the document ''List of Blocks Available for Leasing in Lease Sale 192'' included in the FNOS 192 Package.

Bonus Bid Deposit: Each bidder submitting an apparent high bid must submit a bonus bid deposit to the MMS equal to one-fifth of the bonus bid amount for each such bid. Under the authority granted by 30 CFR 256.46(b), the MMS requires bidders to use electronic funds transfer procedures for payment of one-fifth bonus bid deposits for Lease Sale 192, following the detailed instructions contained in the document ''Instructions for Making EFT Bonus Payments'' included in the final NOS 192 Package. All payments must be electronically deposited into an interest-bearing account in the U.S. Treasury (account specified in the EFT instructions) by 1:00 p.m. Eastern Time the day following bid reading. Such a deposit does not constitute and shall not be construed as acceptance of any bid on behalf of the United States. If a lease is awarded, however, MMS requests that only one transaction be used for payment of the four-fifths bonus bid amount and the first year's rental.

Please note: Certain bid submitters (*i.e.,* those that are NOT currently an OCS mineral lease record title holder or designated operator OR those that have ever defaulted on a one-fifth bonus bid payment (EFT or otherwise)) are required to guarantee (secure) their one-fifth bonus bid payment prior to the submission of bids. For those who must secure the EFT one-fifth bonus bid payment, one of the following options may be used: (1) Provide a third-party guarantee; (2) Amend development bond coverage; (3) Provide a letter of credit; or (4) Provide a lump sum payment in advance via EFT. The EFT instructions specify the requirements for each option.

Withdrawal of Blocks: The United States reserves the right to withdraw any block from this lease sale prior to issuance of a written acceptance of a bid for the block.

Acceptance, Rejection, or Return of Bids: The United States reserves the right to reject any and all bids. In any case, no bid will be accepted, and no lease for any block will be awarded to any bidder, unless the bidder has complied with all requirements of this Notice, including the documents contained in the associated FNOS 192 Package and applicable regulations; the bid is the highest valid bid; and the amount of the bid has been determined to be adequate by the authorized officer. Any bid submitted which does not conform to the requirements of this Notice, the Act, and other applicable regulations may be returned to the person submitting that bid by the RD and not considered for acceptance. The Attorney General may also review the results of the lease sale prior to the acceptance of bids and issuance of leases. To ensure that the Government receives a fair return for the conveyance of lease rights for this lease sale, high bids will be evaluated in accordance with MMS bid adequacy procedures. A copy of current procedures, ''Modifications to the Bid Adequacy Procedures'' at 64 FR 37560 on July 12, 1999, can be obtained from the MMS Gulf of Mexico Region Public Information Unit.

Successful Bidders: As required by the MMS, each company that has been awarded a lease must execute all copies of the lease (Form MMS–2005 (March 1986) as amended), pay by EFT the balance of the bonus bid amount and the first year's rental for each lease issued in accordance with the requirements of 30 CFR 218.155, and satisfy the bonding requirements of 30 CFR 256, Subpart I, as amended.

Also, in accordance with regulations pursuant to 43 CFR, part 42, subpart C, the lessee shall comply with the U.S. Department of the Interior's nonprocurement debarment and suspension requirements and agrees to communicate this requirement to comply with these regulations to persons with whom the lessee does business as it relates to this lease by including this term as a condition to enter into their contracts and other transactions. Execution of the lease, which includes an Addendum specific to debarment, by each lessee constitutes notification to the Minerals Management Service that each lessee is not excluded, disqualified, or convicted of a crime as described in 43 CFR 42.335, unless the lessee has provided a statement disclosing information as described in 43 CFR 42.335, and the

Minerals Management Service receives an exception from the U.S. Department of the Interior as described in 43 CFR 42.405 and 42.120.

Affirmative Action: The MMS requests that, prior to bidding, Equal Opportunity Affirmative Action Representation Form MMS 2032 (June 1985) and Equal Opportunity Compliance Report Certification Form MMS 2033 (June 1985) be on file in the MMS Gulf of Mexico Region Adjudication Unit. This certification is required by 41 CFR 60 and Executive Order No. 11246 of September 24, 1965, as amended by Executive Order No. 11375 of October 13, 1967. In any event, prior to the execution of any lease contract, both forms are required to be on file in the MMS Gulf of Mexico Region Adjudication Unit.

Geophysical Data and Information Statement: Pursuant to 30 CFR 251.12, the MMS has a right to access geophysical data and information collected under a permit in the OCS. Every bidder submitting a bid on a block in Sale 192, or participating as a joint bidder in such a bid, must submit a Geophysical Data and Information Statement identifying any processed or reprocessed pre- and post-stack depth migrated geophysical data and information in its possession or control and used in the evaluation of that block. The existence, extent (*i.e.,* number of line miles for 2D or number of blocks for 3D) and type of such data and information must be clearly identified. The statement must include the name and phone number of a contact person, and an alternate, knowledgeable about the depth data sets (that were processed or reprocessed to correct for depth) used in evaluating the block. In the event such data and information includes data sets from different timeframes, you should identify only the most recent data set used for block evaluations.

The statement must also identify each block upon which a bidder participated in a bid but for which it does not possess or control such depth data and information.

Every bidder must submit a separate Geophysical Data and Information Statement in a sealed envelope. The envelope should be labeled ''Geophysical Data and Information Statement for Oil and Gas Lease Sale 192'' and the bidder's name and qualification number must be clearly identified on the outside of the envelope. This statement must be submitted to the MMS at the Gulf of Mexico Regional Office, Attention: Resource Evaluation (1201 Elmwood Park Boulevard, New Orleans, Louisiana 70123–2394) by 10 a.m. on Tuesday, August 17, 2004. The statement may be submitted in conjunction with the bids or separately. Do not include this statement in the same envelope containing a bid. These statements will not be opened until after the public bid reading at Lease Sale 192 and will be kept confidential. An Example of Preferred Format for the Geophysical Data and Information Statement is included in the FNOS 192 Package.

Please refer to NTL No. 2003–G05 for more detail concerning submission of the Geophysical Data and Information Statement, making the data available to the MMS following the lease sale, preferred format, reimbursement for costs, and confidentiality.

Dated: July 7, 2004.

R.M. ''Johnnie'' Burton,

Director, Minerals Management Service.

[FR Doc. 04–16070 Filed 7–14–04; 8:45 am]

BILLING CODE 4310–MR–P

INTERNATIONAL TRADE COMMISSION

Notice of Appointment of Individuals To Serve as Members of the Executive Resources Board

AGENCY: United States International Trade Commission.

ACTION: Appointment of individuals to serve as members of the executive resources board.

DATES: Effective: June 23, 2004.

FOR FURTHER INFORMATION CONTACT: Jeri L. Buchholz, Director of Human Resources, U.S. International Trade Commission (202) 205–2651.

SUPPLEMENTARY INFORMATION: The Chairman of the U.S. International Trade Commission has appointed the following individuals to serve on the Commission's Executive Resources Board (ERB): Vice Chairman Deanna T. Okun, Chairman of the ERB; Commissioner Marcia E. Miller; Lynn Levine; Stephen A. McLaughlin.

This notice is published in the **Federal Register** pursuant to the requirements of 5 U.S.C. 4314(c)(4). Hearing-impaired individuals are advised that information on this matter can be obtained by contacting our TDD terminal on (202) 205–1810.

By order of the Chairman.

Issued: July 9, 2004.

Marilyn R. Abbott,

Secretary to the Commission.

[FR Doc. 04–15986 Filed 7–14–04; 8:45 am]

BILLING CODE 7020–02–P

INTERNATIONAL TRADE COMMISSION

[Investigation No. 731–TA–1058 (Final)]

Wooden Bedroom Furniture From China

AGENCY: United States International Trade Commission.

ACTION: Scheduling of the final phase of an antidumping investigation.

SUMMARY: The Commission hereby gives notice of the scheduling of the final phase of antidumping investigation No. 731–TA–1058 (Final) under section 735(b) of the Tariff Act of 1930 (19 U.S.C. 1673d(b)) (the Act) to determine whether an industry in the United States is materially injured or threatened with material injury, or the establishment of an industry in the United States is materially retarded, by reason of less-than-fair-value imports from China of wooden bedroom furniture, provided for in subheading 9403.50.90 of the Harmonized Tariff Schedule of the United States (HTS).[1]

[1] For purposes of this investigation, the Department of Commerce has defined the subject merchandise as wooden bedroom furniture. Wooden bedroom furniture is generally, but not exclusively, designed, manufactured, and offered for sale in coordinated groups, or bedrooms, in which all of the individual pieces are of approximately the same style and approximately the same material and/or finish. The subject merchandise is made substantially of wood products, including both solid wood and also engineered wood products made from wood particles, fibers, or other wooden materials such as plywood, oriented strand board, particle board, and fiberboard, with or without wood veneers, wood overlays, or laminates, with or without non-wood components or trim such as metal, marble, leather, glass, plastic, or other resins, and whether or not assembled, completed, or finished. The subject merchandise includes: (1) Wooden beds such as loft beds, bunk beds, and other beds; (2) wooden headboards for beds (whether stand alone or attached to side rails), wooden footboards for beds, wooden side rails for beds, and wooden canopies for beds; (3) night tables, night stands, dressers, commodes, bureaus, mule chests, gentlemen's chests, bachelor's chests, lingerie chests, wardrobes, vanities, chessers, chifforobes, and wardrobe type cabinets; (4) dressers with framed glass mirrors that are attached to, incorporated in, sit on, or hang over the dresser; (5) chests-on-chests, highboys, lowboys, chests of drawers, chests, door chests, chiffoniers, hutches, and armoires; (6) desks, computer stands, filing cabinets, bookcases, or writing tables that are attached to or incorporated in the subject merchandise; and (7) other bedroom furniture consistent with the above list.

The scope of the petition excludes: (1) Seats, chairs, benches, couches, sofas, sofa beds, stools, and other seating furniture; (2) mattresses, mattress supports (including box springs), infant cribs, water beds, and futon frames; (3) office furniture, such as desks, stand-up desks, computer cabinets, filing cabinets, credenzas, and bookcases; (4) dining room or kitchen furniture such as dining tables, chairs, servers, sideboards, buffets, corner cabinets, china cabinets, and china hutches; (5) other non-bedroom furniture, such as television cabinets, cocktail tables, end tables, occasional tables, wall systems,

For further information concerning the conduct of this phase of the investigation, hearing procedures, and rules of general application, consult the Commission's Rules of Practice and Procedure, part 201, subparts A through E (19 CFR part 201), and part 207, subparts A and C (19 CFR part 207).

EFFECTIVE DATE: June 24, 2004.

FOR FURTHER INFORMATION CONTACT: Fred Fischer (202) 205–3179 or *fred.fischer@usitc.gov*), Office of Investigations, U.S. International Trade Commission, 500 E Street SW., Washington, DC 20436. Hearing-impaired persons can obtain information on this matter by contacting the Commission's TDD terminal on 202–205–1810. Persons with mobility impairments who will need special assistance in gaining access to the Commission should contact the Office of the Secretary at (202) 205–2000. General information concerning the Commission may also be obtained by accessing its internet server (*http://www.usitc.gov*). The public record for this investigation may be viewed on the Commission's electronic docket (EDIS) at *http://edis.usitc.gov.*

SUPPLEMENTARY INFORMATION:

Background.—The final phase of this investigation is being scheduled as a result of an affirmative preliminary determination by the Department of Commerce that imports of wooden bedroom furniture from China are being sold in the United States at less than fair value [2] within the meaning of section 733 of the Act (19 U.S.C. 1673b). The investigation was requested in a petition filed on October 31, 2004, by the American Furniture Manufacturers Committee for Legal Trade, Washington, DC, and its individual members; Cabinet Makers, Millmen, and Industrial Carpenters Local 721, Whittier, CA; UBC Southern Council of Industrial Workers Local Union 2305, Columbus, MS; United Steel Workers of America Local 193U, Lewisburg, PA; Carpenters Industrial Union Local 2093, Phoenix, AZ; and Teamsters, Chauffeurs, Warehousemen and Helpers Local 991, Bay Minette, AL.

Participation in the investigation and public service list.—Persons, including industrial users of the subject merchandise and, if the merchandise is sold at the retail level, representative consumer organizations, wishing to participate in the final phase of this investigation as parties must file an entry of appearance with the Secretary to the Commission, as provided in section 201.11 of the Commission's rules, no later than 21 days prior to the hearing date specified in this notice. A party that filed a notice of appearance during the preliminary phase of the investigation need not file an additional notice of appearance during this final phase. The Secretary will maintain a public service list containing the names and addresses of all persons, or their representatives, who are parties to the investigation.

Limited disclosure of business proprietary information (BPI) under an administrative protective order (APO) and BPI service list.—Pursuant to section 207.7(a) of the Commission's rules, the Secretary will make BPI gathered in the final phase of this investigation available to authorized applicants under the APO issued in the investigation, provided that the application is made no later than 21 days prior to the hearing date specified in this notice. Authorized applicants must represent interested parties, as defined by 19 U.S.C. 1677(9), who are parties to the investigation. A party granted access to BPI in the preliminary phase of the investigation need not reapply for such access. A separate service list will be maintained by the Secretary for those parties authorized to receive BPI under the APO.

Staff report.—The prehearing staff report in the final phase of this investigation will be placed in the nonpublic record on October 26, 2004, and a public version will be issued thereafter, pursuant to section 207.22 of the Commission's rules.

Hearing.—The Commission will hold a hearing in connection with the final phase of this investigation beginning at 9:30 a.m. on November 9, 2004, at the U.S. International Trade Commission Building. Requests to appear at the hearing should be filed in writing with the Secretary to the Commission on or before October 29, 2004. A nonparty who has testimony that may aid the Commission's deliberations may request permission to present a short statement at the hearing. All parties and nonparties desiring to appear at the hearing and make oral presentations should attend a prehearing conference to be held at 9:30 a.m. on November 2, 2004, at the U.S. International Trade Commission Building. Oral testimony and written materials to be submitted at the public hearing are governed by sections 201.6(b)(2), 201.13(f), and 207.24 of the Commission's rules. Parties must submit any request to present a portion of their hearing testimony *in camera* no later than 7 days prior to the date of the hearing.

Written submissions.—Each party who is an interested party shall submit a prehearing brief to the Commission. Prehearing briefs must conform with the provisions of section 207.23 of the Commission's rules; the deadline for filing is November 2, 2004. Parties may also file written testimony in connection with their presentation at the hearing, as provided in section 207.24 of the Commission's rules, and posthearing briefs, which must conform with the provisions of section 207.25 of the Commission's rules. The deadline for filing posthearing briefs is November 17, 2004; witness testimony must be filed no later than three days before the hearing. In addition, any person who has not entered an appearance as a party to the investigation may submit a written statement of information pertinent to the subject of the investigation on or before November 17, 2004. On December 3, 2004, the Commission will make available to parties all information on which they have not had an opportunity to comment. Parties may submit final comments on this information on or before December 7, 2004, but such final comments must not contain new factual information and must otherwise comply with section 207.30 of the Commission's rules. All written submissions must conform with the provisions of section 201.8 of the Commission's rules; any submissions that contain BPI must also conform with the requirements of sections 201.6, 207.3, and 207.7 of the Commission's rules. The Commission's rules do not authorize filing of submissions with the Secretary by facsimile or electronic means, except to the extent permitted by section 201.8 of the Commission's rules, as amended, 67 Fed. Reg. 68036 (November 8, 2002).

In accordance with sections 201.16(c) and 207.3 of the Commission's rules, each document filed by a party to the investigation must be served on all other parties to the investigation (as identified by either the public or BPI service list), and a certificate of service must be timely filed. The Secretary will not

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book cases, and entertainment systems; (6) bedroom furniture made primarily of wicker, cane, osier, bamboo or rattan; (7) side rails for beds made of metal if sold separately from the headboard and footboard; and (8) bedroom furniture in which bentwood parts predominate.

Imports of subject merchandise are classified under statistical category 9403.50.9040 of the HTS as ''wooden * * * beds'' and under statistical category 9403.50.9080 of the HTSUS as ''other * * * wooden furniture of a kind used in the bedroom.'' In addition, wooden headboards for beds, wooden foot boards for beds, wooden side rails for beds, and wooden canopies for beds may also be entered under statistical category 9403.50.9040 of the HTSUS as ''parts of wood''' and framed glass mirrors may also be entered under statistical category 7009.92.5000 of the HTSUS as '''glass mirrors * * * framed.'' This investigation covers all wooden bedroom furniture meeting the above description, regardless of tariff classification.

[2] 69 FR 35312, June 24, 2004.

accept a document for filing without a certificate of service.

Authority: This investigation is being conducted under authority of title VII of the Tariff Act of 1930; this notice is published pursuant to section 207.21 of the Commission's rules.

By order of the Commission.

Issued: July 8, 2004.

Marilyn R. Abbott,

Secretary to the Commission.

[FR Doc. 04–15985 Filed 7–14–04; 8:45 am]

BILLING CODE 7020–02–P

INTERNATIONAL TRADE COMMISSION

[Inv. No. 337–TA–493]

In the Matter of Certain Zero-Mercury-Added Alkaline Batteries, Parts Thereof, and Products Containing Same; Notice of Commission Decisions To Extend the Time To Determine Whether To Review an Initial Determination and To Extend the Target Date

AGENCY: U.S. International Trade Commission.

ACTION: Notice.

SUMMARY: Notice is hereby given that the U.S. International Trade Commission has determined to extend to August 19, 2004, the time to determine whether to review the presiding administrative law judge's (''ALJ's'') final initial determination (''ID'') finding a violation of section 337 of the Tariff Act of 1930 in the above-captioned investigation. The Commission has also decided to extend the target date for completing the investigation to October 1, 2004.

FOR FURTHER INFORMATION CONTACT: Wayne Herrington, Esq., Office of the General Counsel, U.S. International Trade Commission, 500 E Street, SW., Washington, DC 20436, telephone (202) 205–3090. Copies of the ALJ's ID and all other nonconfidential documents filed in connection with this investigation are or will be available for inspection during official business hours (8:45 a.m. to 5:15 p.m.) in the Office of the Secretary, U.S. International Trade Commission, 500 E Street, SW., Washington, DC 20436, telephone 202–205–2000. General information concerning the Commission may also be obtained by accessing its Internet server (*http://www.usitc.gov*). The public record for this investigation may be viewed on the Commission's electronic docket (EDIS–ON–LINE) at *http://edis.usitc.gov.* Hearing-impaired persons are advised that information on this matter can be obtained by contacting the Commission's TDD terminal on 202–205–1810.

SUPPLEMENTARY INFORMATION: The Commission instituted this investigation on June 2, 2003, based on a complaint filed by Energizer Holdings, Inc. and Eveready Battery Company, Inc., both of St. Louis, Missouri. 68 FR 32771 (June 2, 2003). The complaint, as supplemented, alleged violations of section 337 of the Tariff Act of 1930 in the importation into the United States, the sale for importation, and the sale within the United States after importation of certain zero-mercury-added alkaline batteries, parts thereof, and products containing same by reason of infringement of claims 1–12 of U.S. Patent No. 5,464,709 (''the '709 patent''). The complaint and notice of investigation named 26 respondents and were later amended to include an additional firm as a respondent. The investigation has been terminated as to claims 8–12 of the '709 patent. Several respondents have been terminated from the investigation for various reasons.

On June 2, 2004, the ALJ issued his final ID finding a violation of section 337. He also recommended the issuance of remedial orders. A number of the remaining respondents have petitioned for review of the ID. Complainants and the Commission investigative attorney have filed oppositions to those petitions.

This action is taken under the authority of section 337 of the Tariff Act of 1930, as amended (19 U.S.C. 1337), and sections 210.42 and 210.51 of the Commission's Rules of Practice and Procedure (19 CFR 210.42, 210.51).

By order of the Commission.

Issued: July 9, 2004.

Marilyn R. Abbott,

Secretary to the Commission.

[FR Doc. 04–16083 Filed 7–14–04; 8:45 am]

BILLING CODE 7020–02–P

DEPARTMENT OF JUSTICE

Notice of Lodging of Consent Decree Under the Resource Conservation and Recovery Act (''RCRA'')

Consistent with Departmental policy, 28 CFR 50.7, notice is hereby given that on June 23, 2004, a proposed Consent Decree in *United States* v. *Flura Corporation, et al.* Civil Action No. 2:04–CV–00200 was lodged with the United States District Court for the Eastern District of Tennessee.

In this action the United States sought injunctive relief and penalties against Flura Corporation (''Flura'') and Edward Tyczkowski pursuant to the Solid Waste Disposal Act, as amended by the Resource Conservation and Recovery Act (''RCRA'') Section 7003. The United States sought an injunction requiring Flura and Edward Tyczkowski to comply with Administrative Orders issued by EPA on June 17, 1999 and March 30, 2000, in order to abate an imminent and substantial endangerment to public health, welfare, and the environment connected with Flura's facility at 610 Rock Hill Road, Newport, Cocke County, Tennessee. The United States also sought civil penalties for Defendant's violations of the Administrative Orders pursuant to Section 7003(b) of RCRA, 42 U.S.C. 6973(b).

Due to the insolvency of Flura, and the confirmed inability to pay a penalty of Edward Tyczkowski, the proposed Consent Decree, which settles the liability of Flura and Mr. Tyczkowski for violations alleged in the Complaint, does not require the payment of any penalty. The proposed Consent Decree requires continued compliance with the EPA Administrative Orders and injunctive relief as to Edward Tyczkowski's handling, storage, treatment, transportation or disposal of solid or hazardous waste.

The Department of Justice will receive for a period of thirty (30) days from the date of this publication comments relating to the proposed Consent Decree. Commenters may request an opportunity for a public meeting in the affected area, in accordance with Section 7003(d) of RCRA, 42 U.S.C. 6973(d). Comments should be addressed to the Assistant Attorney General, Environmental and Natural Resources Division, P.O. Box 7611, U.S. Department of Justice, Washington, D.C. 20044–7611, and should refer to *United States* v. *Flura Corporation, et al.,* D.J. Ref. 90–7–1–06889.

The proposed Consent Decree may be examined at the Office of the United States Attorney, 800 Market Street, Suite 211 Knoxville, TN 37902, and at U.S. EPA Region IV, 61 Forsyth Street, Atlanta, Georgia, 30303. During the public comment period the proposed Consent Decree may also be examined on the following Department of Justice Web site *http://www.usdoj.gov/enrd/open.html.* A copy of the proposed Consent Decree may also be obtained by mail from the Consent Decree Library, P.O. Box 7611, U.S. Department of Justice, Washington, DC 20044–7611 or by faxing or e-mailing a request to Tonia Fleetwood *(tonia.fleetwood@usdoj.gov),* fax no. (202) 514–0097, phone confirmation number (202) 514–1547. In requesting a copy, please enclose a

check in the amount of $7.00 (25 cents per page reproduction cost) payable to the U.S. Treasury.

Ellen Mahan,

Assistant Section Chief Environmental Enforcement Section Environment and Natural Resources Division

[FR Doc. 04–16001 Filed 7–14–04; 8:45 am]

BILLING CODE 4410–15–M

DEPARTMENT OF JUSTICE

Notice of Lodging of Settlement Stipulation Under the Comprehensive Environmental Response, Compensation and Liability Act

Notice is hereby given that on July 7, 2004, a proposed Settlement Agreement in *In re Pittsburgh-Canfield Corporation, et al.,* Case Nos. 00–43394—00–43402 (Bankr. N.D. Ohio), was lodged with the United States Bankruptcy Court for the Northern District of Ohio.

In this action the United States filed a proof of claim against the estate of debtor Wheeling-Pittsburgh Corporation for the recovery of response costs incurred, under Section 104(a) of the Comprehensive Environmental Response, Compensation and Liability Act, as amended (''CERCLA''), 42 U.S.C. 9604(a), at the Breslube-Penn Superfund Site near Pittsburgh, Pennsylvania and at the Four County Landfill Site in Fulton County, Indiana. The United States' proof of claim was for an unliquidated amount. Under the proposed settlement, the United States will receive, on behalf of the United States Environmental Protection Agency, an allowed claim in the amount of $1,500,000 for its response costs at the Breslube-Penn Site and an allowed claim of $50,000 for its response costs at the Four County Landfill Site.

The Department of Justice will receive for a period of thirty (30) days from the date of this publication comments relating to the proposed Settlement Agreement. Comments should be addressed to the Assistant Attorney General for the Environment and Natural Resources Division, P.O. Box 7611, U.S. Department of Justice, Washington, DC 20044–7611, and should refer to *In re Pittsburgh-Canfield Corporation,* DJ No. 90–7–1–06977/1.

The proposed Settlement Agreement may be examined at the office of the United States Attorney, Northern District of Ohio, 801 W. Superior Avenue, Suite 400, Cleveland, Ohio 44113 and at the Region III Office of the Environmental Protection Agency, 1650 Arch St., Philadelphia, Pennsylvania 19103. During the public comment period, the Stipulation and Agreement may also be examined on the following Department of Justice Web site, *http://www.usdoj.gov/enrd/open.html.* A copy of the Stipulation and Agreement may be obtained by mail from the Consent Decree Library, P.O. Box 7611, U.S. Department of Justice, Washington, DC 20044–7611 or by faxing or e-mailing a request to Tonia Fleetwood (*tonia.fleetwood@usdoj.gov*), fax no. (202) 514–0097, phone confirmation number (202) 514–1547. In requesting a copy from the Consent Decree Library, please enclose a check in the amount of $3.25 (25 cents per page reproduction cost) payable to the U.S. Treasury. In all correspondence, please refer to the case by its title and DOJ Ref. # 90–7–1–06977/1.

Robert D. Brook,

Assistant Chief, Environmental Enforcement Section, Environment and Natural Resources Division.

[FR Doc. 04–15997 Filed 7–14–04; 8:45 am]

BILLING CODE 4410–15–M

DEPARTMENT OF JUSTICE

Notice of Lodging of Consent Decree Under the Clean Water Act

Under 28 CFR 50.7, notice is hereby given that on June 25, 2004, a proposed Consent Decree in *United States and State of Louisiana* v. *Sewerage District No. 1 of Iberia Parish,* Civil Action No. 04–1352 was lodged with the United States District Court for the Western District of Louisiana.

In this action the United States, and its co-plaintiff the State of Louisiana, sought injunctive relief and a civil penalty to address sanitary sewer overflows and other violations of the Clean Water Act and the National Pollutant Discharge Elimination System (''NPDES'') permit issued jointly to the Sewerage District No. 1 and the City of New Iberia for the Tete Bayou publicly owned treatment works (''POTW''). Under the proposed Consent Decree, the Sewerage District No. 1 has agreed to perform a comprehensive characterization, evaluation, and rehabilitation of the Sewerage District's collection system, and to construct and equalization basin to eliminate sanitary sewer overflows at the Tete Bayou POTW. The Sewerage District also has agreed to pay a civil penalty of $51,400, one half of which will be paid to the United States and half of which will be paid to the State.

The Department of Justice will receive for a period of thirty (30) days from the date of this publication comments relating to the Consent Decree. Comments should be addressed to the Assistant Attorney General, Environment and Natural Resources Division, P.O. Box 7611, U.S. Department of Justice, Washington, DC 20044–7611, and should refer to *United States* v. *Sewerage District No. 1 of Iberia Parish,* D.J. Ref. No. 90–5–1–1–07473.

The Consent Decree may be examined during the public comment period on the following Department of Justice Web site: *http://www.usdoj.gov/enrd/open.html.* A copy of the Consent Decree may also be obtained by mail from the Consent Decree Library, P.O. Box 7611, U.S. Department of Justice, Washington, DC 20044–7611 or by faxing or e-mailing a request to Tonia Fleetwood (*tonia.fleetwood@usdoj.gov*), fax no. (202) 514–0097, phone confirmation number (202) 514–1547. In requesting a copy from the Consent Decree Library, please enclose a check in the amount of $16.00 (25 cents per page reproduction cost) payable to the U.S. Treasury.

Thomas A. Mariani, Jr.,

Assistant Section Chief, Environmental Enforcement Section, Environment and Natural Resources Division.

[FR Doc. 04–16000 Filed 7–14–04; 8:45 am]

BILLING CODE 4410–15–M

DEPARTMENT OF JUSTICE

Federal Bureau of Investigations

Agency Information Collection Activities: Proposed Collection; Comments Requested

ACTION: 30-Day Notice of Information Collection Under Review: Supplementary Homicide Report.

The Department of Justice (DOJ), Federal Bureau of Investigations (FBI), has submitted the following information collection request to the Office of Management and Budget (OMB) for review and approval in accordance with the Paperwork Reduction Act of 1995. The proposed information collection is published to obtain comments from the public and affected agencies. This proposed information collection was previously published in the **Federal Register** Volume 69, Number 6, page 1605 on January 9, 2004, allowing for a 60 day comment period.

The purpose of this notice is to allow for an additional 30 days for public comment until August 16, 2004. This process is conducted in accordance with 5 CFR 1320.10.

Written comments and/or suggestions regarding the items contained in this notice, especially the estimated public

burden and associated response time, should be directed to The Office of Management and Budget, Office of Information and Regulatory Affairs, Attention Department of Justice Desk Officer, Washington, DC 20503. Additionally, comments may be submitted to OMB via facsimile to (202) 395–5806. Written comments and suggestions from the public and affected agencies concerning the proposed collection of information are encouraged. Your comments should address one or more of the following four points:

- Evaluate whether the proposed collection of information is necessary for the proper performance of the functions of the agency, including whether the information will have practical utility;
- Evaluate the accuracy of the agencies estimate of the burden of the proposed collection of information, including the validity of the methodology and assumptions used;
- Enhance the quality, utility, and clarity of the information to be collected; and
- Minimize the burden of the collection of information on those who are to respond, including through the use of appropriate automated, electronic, mechanical, or other technological collection techniques or other forms of information technology, *e.g.,* permitting electronic submission of responses.

Overview of This Information Collection

(1) *Type of Information Collection:* Extension of a currently approved collection.

(2) *Title of the Form/Collection:* Supplementary Homicide Report.

(3) *Agency form number, if any, and the applicable component of the Department of Justice sponsoring the collection:* Form Number: 1–704. Federal Bureau of Investigation, Criminal Justice Information Services Division, Department of Justice.

(4) *Affected public who will be asked or required to respond, as well as a brief abstract:* Primary: State and local law enforcement agencies. Other: none. This report will gather specific incident data related to murder and nonnegligent manslaughter offenses. The resulting data are published annually.

(5) *An estimate of the total number of respondents and the amount of time estimated for an average respondent to respond:* There are approximately 17,324 law enforcement agency respondents at 9 minutes per report.

(6) *An estimate of the total public burden (in hours) associated with the collection:* There are an estimated 31,183 total annual burden hours associated with this collection.

FOR FURTHER INFORMATION CONTACT: Brenda E. Dyer, Clearance Officer, United States Department of Justice, Justice Management Division, Policy and Planning Staff, Patrick Henry Building, Suite 1600, 601 D Street NW., Washington, DC 20530.

Dated: July 9, 2004.

Brenda E. Dyer,

Clearance Officer, Department of Justice.

[FR Doc. 04–16020 Filed 7–14–04; 8:45 am]

BILLING CODE 4410–02–P

DEPARTMENT OF LABOR

Office of the Secretary

Submission for OMB Review; Comment Request

July 8, 2004.

The Department of Labor (DOL) has submitted the following public information collection request (ICR) to the Office of Management and Budget (OMB) for review and approval in accordance with the Paperwork Reduction Act of 1995 (Pub. L. 104–13, 44 U.S.C. Chapter 35). A copy of each ICR, with applicable supporting documentation, may be obtained by contacting the Department of Labor (DOL). To obtain documentation, contact Ira Mills on 202–693–4122 (this is not a toll-free number) or E-Mail: *mills.ira@dol.gov.*

Comments should be sent to Office of Information and Regulatory Affairs, Attn: OMB Desk Officer for DOL, Office of Management and Budget, Room 10235, Washington, DC 20503 202–395–7316 (this is not a toll-free number), within 30 days from the date of this publication in the **Federal Register**.

The OMB is particularly interested in comments which:

- Evaluate whether the proposed collection of information is necessary for the proper performance of the functions of the agency, including whether the information will have practical utility;
- Evaluate the accuracy of the agency's estimate of the burden of the proposed collection of information, including the validity of the methodology and assumptions used;
- Enhance the quality, utility, and clarity of the information to be collected; and
- Minimize the burden of the collection of information on those who are to respond, including through the use of appropriate automated, electronic, mechanical, or other technological collection techniques or other forms of information technology, *e.g.,* permitting electronic submission of responses.

Agency: Employment and Training Administration.

Type of Review: New Collection.

Title: Employment and Training Data Validation Requirement.

OMB Number: 1205–0NEW.

Frequency: Annually.

Affected Public: Not-for-profit institutions; State, local, or tribal government; Federal Government.

Number of Respondents: 317.

Number of Annual Responses: 317.

Burden Summary Below:

A. State Programs: WIA Title IB, Wagner-Peyser, and TAA

Table 1 indicates that the annual hours needed to perform validation for the WIA Title IB, Wagner-Peyser, and TAA programs is 792 hours on average per state and 41,970 hours for all states. The annual cost of performing validation for these programs is $25,736 on average per state and $1,364,025 for all states.

TABLE 1.—CALCULATION OF COMBINED ANNUAL BURDEN FOR WIA TITLE IB, WAGNER-PEYSER, AND TAA

	Number of states	Hours	Rate in $/hr	Cost
Large State	18	1,206	$32.50	$39,195
Medium State	18	746	32.50	24,245
Small State	17	402	32.50	13,065
All States Total	53	41,970	32.50	1,364,025
Average per State	.....	792	32.50	25,736

• The calculation of the hours required to perform validation includes the time for validators to review sampled case files (between 33 and 35 minutes per file), the travel time to local offices to review the files, and 15% of a supervisor's time.
• States have been divided into three categories—large, medium, and small—based on the number of participants that exit a state's program in a year. The size of the state impacts the number of sampled case files that must be reviewed and the travel time to local offices.
• The travel time per office is estimated as 8 hours for large states, 6 hours for medium states, and 3 hours for small states.
• The estimate of burden is based on the assumption that states will perform data element validation separately for the WIA Title IB and TAA programs. If states perform data element validation for both programs at the same time, the travel time required to perform validation will decrease. As a result, the burden would be reduced by approximately 160 hours for large states, 60 hours for medium states, and 21 hours for small states.
• The hourly rate is the estimated average hourly earnings for employees in state Unemployment Insurance (UI) agencies in FY 2003 (as used for FY 2003 UI budget formulation purposes).

B. Grantee Programs: MSFW, Native American Employment and Training, and SCSEP

Table 2 provides an overview of the annual burden for the MSFW Program, Indian and Native American Employment and Training Program, and SCSEP, and average hours and cost across grantees in all three programs. The annual hours needed to perform validation for a grantee operating one of these programs is 102 hours on average per grantee and 26,830 hours for all grantees. The annual cost of performing validation is $1,878 on average per grantee and $495,767 for all grantees.

TABLE 2.—CALCULATION OF ANNUAL BURDEN FOR MSFW, NATIVE AMERICAN EMPLOYMENT AND TRAINING, AND SCSEP GRANTEES

	Number of grantees	Hours	Rate in $/hr	Cost
MSFW Grantee	52	158	$10.75/$32.50	$1,896
Native American Employment & Training Grantee	144	53	10.75	569
SCSEP Grantee	68	162	10.75/32.50	4,637
All Grantees	264	26,830	10.75/32.50	495,767
Average per Grantee	.....	102	10.75/32.50	1,878

• The calculation of the hours required to perform validation includes the time for validators to review sampled case files (40 minutes per file) and 15% of a supervisor's time. (Travel is not required for grantees to perform validation).
• The hourly rate used to calculate cost depends upon the type of organization receiving the grant. For state, county, and U.S. territory government grantees, the hourly rate is the estimated average hourly earnings for employees in state UI agencies in FY 2003 (as used for FY 2003 UI budget formulation purposes). For private non-profit grantees and Federally-recognized tribes, the hourly rate is the average hourly earnings in the social assistance industry (May 2003, Current Employment Statistics Survey, U.S. Census Bureau).

Tables 3, 4, and 5 provide a more detailed account of the annual burdens for each grantee program.

TABLE 3.—CALCULATION OF ANNUAL BURDEN FOR MSFW

Type of grantee	Number of grantees	Hours	Rate in $/hr	Cost
Private Non-Profit	49	158	$10.75	$1,698
State or County Government	3	158	32.50	5,133
All Grantees	52	8,212	.....	98,588
Avg. per Grantee	.....	158	.....	1,896

Note: The hourly rate used to calculate cost depends upon the type of organization receiving the grant. For state and county government grantees, the hourly rate is the estimated average hourly earnings for employees in state UI agencies in FY 2003 (as used for FY 2003 UI budget formulation purposes). For private non-profit grantees, the hourly rate is the average hourly earnings in the social assistance industry (May 2003, Current Employment Statistics Survey, U.S. Census Bureau).

TABLE 4.—CALCULATION OF ANNUAL BURDEN FOR INDIAN AND NATIVE AMERICAN EMPLOYMENT AND TRAINING

Type of grantee	Number of grantees	Hours	Rate in $/hr	Cost
Private Non-Profit	70	53	$10.75	$569
Federally-Recognized Tribe	74	53	10.75	569
All Grantees	144	7,618	.....	81,889
Avg. per Grantee	.....	53	569	

Note: The hourly rate used to calculate cost is the average hourly wage in the social assistance industry (May 2003, Current Employment Statistics Survey, U.S. Census Bureau).

TABLE 5.—CALCULATION OF ANNUAL BURDEN FOR SCSEP

Type of grantee	No. of grantees	Hours	Rate in $/hr	Cost
Private Non-Profit	12	162	$10.75	$1,739
State or U.S. Territory Government	56	162	32.50	5,258
All Grantees	68	11,000		315,290
Avg. per Grantee		162		4,637

Note: The hourly rate used to calculate cost depends upon the type of organization receiving the grant. For state and U.S. territory government grantees, the hourly rate is the estimated average hourly earnings for employees in state UI agencies in FY 2003 (as used for FY 2003 UI budget formulation purposes). For private non-profit grantees, the hourly rate is the average hourly earnings in the social assistance industry (May 2003, Current Employment Statistics Survey, U.S. Census Bureau).

Estimated Time Per Response: 792 hours per state and 102 hours per grantee.

Total Burden Hours: 66,880.

Total annualized capital/startup costs: $767,000.

Total annual costs (operating/maintaining systems or purchasing services): $1,860,000.

Total annualized cost requested: $2,627,000.

Description: Data Validation would require states and grantees to ascertain the validity of report and participant record data submitted to the Employment and Training Administration and to submit reports to the Agency on data accuracy. The following programs would be subject to the validation requirement: Workforce Investment Act Title IB, Labor Exchange, Trade Adjustment Assistance, Migrant and Seasonal Farmworkers, Native American Employment and Training, and Senior Community service Employment Program.

Ira L. Mills,

Departmental Clearance Officer.

[FR Doc. 04–16055 Filed 7–14–04; 8:45 am]

BILLING CODE 4510–30–P

DEPARTMENT OF LABOR

Office of the Secretary

Submission for OMB Review: Comment Request

July 8, 2004.

The Department of Labor (DOL) has submitted the following public information collection request (ICR) to the Office of Management and Budget (OMB) for review and approval in accordance with the Paperwork Reduction Act of 1995 (Pub. L. 104–13, 44 U.S.C. chapter 35). A copy of this ICR, with applicable supporting documentation, may be obtained by contacting the Department of Labor (DOL). To obtain documentation, contact Darrin King on 202–693–4129 (this is not a toll-free number) or e-mail: *king.darrin@dol.gov.*

Comments should be sent to Office of Information and Regulatory Affairs, Attn: OMB Desk Officer for the Occupational Safety and Health Administration (OSHA), Office of Management and Budget, Room 10235, Washington, DC 20503, 202–395–7316 (this is not a toll-free number), within 30 days from the date of this publication in the **Federal Register**.

The OMB is particularly interested in comments which:

- Evaluate whether the proposed collection of information is necessary for the proper performance of the functions of the agency, including whether the information will have practical utility;
- Evaluate the accuracy of the agency's estimate of the burden of the proposed collection of information, including the validity of the methodology and assumptions used;
- Enhance the quality, utility, and clarity of the information to be collected; and
- Minimize the burden of the collection of information on those who are to respond, including through the use of appropriate automated, electronic, mechanical, or other technological collection techniques or other forms of information technology, *e.g.*, permitting electronic submission of responses.

Agency: Occupational Safety and Health Administration.

Type of Review: Extension of currently approved collection.

Title: Welding, Cutting and Brazing (29 CFR 1910.255(e)).

OMB Number: 1218–0207.

Frequency: Periodic.

Type of Response: Recordkeeping.

Affected Public: Business or other for-profit; Not-for-profit institutions; Federal Government; and State, local, or tribal government.

Number of Respondents: 23,490.

Number of Annual Responses: 94,289.

Estimated Time Per Response: Varies from 1 minute to maintain the inspection certification record to 7 minutes to perform the inspection and to generate and maintain the inspection certification record.

Total Burden Hours: 6,588.

Total Annualized capital/startup costs: $0.

Total Annual Costs (operating/maintaining systems or purchasing services): $0.

Description: 29 CFR 1910.255(e) requires that a periodic inspection of resistance welding equipment be made by qualified maintenance personnel, and that a certification record be generated and maintained. The certification shall include the date of the inspection, the signature of the person who performed the inspection and the serial number, or other identifier, for the equipment inspected. The record shall be made available to an OSHA inspector upon request. The maintenance inspection ensures that welding equipment is in safe operating condition while the maintenance record provides evidence to employees and Agency compliance officers that employers performed the required inspections.

Ira L. Mills,

Departmental Clearance Officer.

[FR Doc. 04–16056 Filed 7–14–04; 8:45 am]

BILLING CODE 4510–26–P

DEPARTMENT OF LABOR

Office of the Secretary

Submission for OMB Review; Comment Request

July 9, 2004.

The Department of Labor (DOL) has submitted the following public information collection request (ICR) to the Office of Management and Budget (OMB) for review and approval in accordance with the Paperwork Reduction Act of 1995 (Pub. L. 104–13, 44 U.S.C. chapter 35). A copy of each ICR, with applicable supporting documentation, may be obtained by contacting the Department of Labor (DOL). To obtain documentation, contact Ira Mills on 202–693–4122 (this is not a toll-free number) or e-mail: *mills.ira@dol.gov.*

Comments should be sent to Office of Information and Regulatory Affairs,

Attn: OMB Desk Officer for DOL, Office of Management and Budget, Room 10235, Washington, DC 20503 202–395–7316 (this is not a toll-free number), within 30 days from the date of this publication in the **Federal Register**.

The OMB is particularly interested in comments which:

• Evaluate whether the proposed collection of information is necessary for the proper performance of the functions of the agency, including whether the information will have practical utility;

• Evaluate the accuracy of the agency's estimate of the burden of the proposed collection of information, including the validity of the methodology and assumptions used;

• Enhance the quality, utility, and clarity of the information to be collected; and

• Minimize the burden of the collection of information on those who are to respond, including through the use of appropriate automated, electronic, mechanical, or other technological collection techniques or other forms of information technology, *e.g.*, permitting electronic submission of responses.

Agency: Employment and Training Administration.

Type of Review: Extension of a currently approved collection.

Title: Attestations by Employers Using Alien Crewmembers for Longshore Activities in U.S. Ports.

OMB Number: 1205–0309.

Frequency: On occasion.

Affected Public: Business or other for-profit.

Number of Respondents: 1.

Number of Annual Responses: 1.

Activity	Average time per response	Total burden
Review Instructions	30 minutes	30 minutes.
Compile Info/File	2 hours	2 hours.
Complete, Summit and Provide notice	1 hour	1 hour.
Documentation/Maintenance	30 minutes	30 minutes.

Total Burden Hours: 4 hours.

Total Annualized Capital/Startup Costs: $0.

Total Annual Costs (Operating/Maintaining Systems or Purchasing Services): $0.

Description: The information provided on this form by employers seeking to use alien crewmembers to perform longshore activities in U.S. ports will permit the Department to meet federal responsibilities for program administration, management and oversight.

Ira L. Mills,

Departmental Clearance Officer.

[FR Doc. 04–16057 Filed 7–14–04; 8:45 am]

BILLING CODE 4510–30–P

DEPARTMENT OF LABOR

Employment and Training Administration

Proposed Information Collection Request Submitted for Public Comment and Recommendations Unemployment Insurance (UI) Data Validation (DV) Program

ACTION: Notice.

SUMMARY: As part of its continuing effort to reduce paperwork and respondent burden, the Department of Labor (Department) conducts a preclearance consultation program to provide the general public and Federal agencies with an opportunity to comment on proposed and/or continuing collections of information in accordance with the Paperwork Reduction Act of 1995 (PRA95) [44 U.S.C. 3506(c)(2)(A)]. This program helps to ensure that the requested data can be provided in the desired format, reporting burden (time and financial resources) is minimized, collection instruments are clearly understood, and the impact of collection requirements on respondents can be properly assessed.

The Employment and Training Administration (ETA) is soliciting comments concerning the proposed reauthorization of its authority to collect information on the accuracy of State UI required reports produced by the UI DV program. ETA is seeking Office of Management and Budget (OMB) approval under the PRA95 to extend for three years authority to collect this information that expires on December 31, 2004.

DATES: Submit comments on or before September 13, 2004.

ADDRESSES: Submit comments to Burman Skrable, Office of Workforce Security, Employment and Training Administration, U.S. Department of Labor, Room S–4522, 200 Constitution Avenue, NW., Washington, DC 20210, telephone: 202–693–3197 (this is not a toll-free number), fax: 202–693–3975, e-mail: *skrable.burman@dol.gov.*

FOR FURTHER INFORMATION CONTACT: Burman Skrable, Office of Workforce Security, Employment and Training Administration, U.S. Department of Labor, Room S–4522, 200 Constitution Avenue, NW., Washington, DC 20210, telephone: 202–693–3197 (this is not a toll-free number); fax: 202–693–3975; e-mail: *skrable.burman@dol.gov.*

SUPPLEMENTARY INFORMATION:

I. Background

Section 303(a)(6) of the Social Security Act specifies that the Secretary of Labor will not certify State UI programs to receive administrative grants unless the State's law includes provisions for—

making of such reports * * * as the Secretary of Labor may from time to time require, and compliance with such provisions as the Secretary may from time to time find necessary to assure the correctness and verification of such reports.

The Department considers data validation one of those ''provisions * * * necessary to assure the correctness and verification'' of the reports it requires.

The Government Performance and Results Act of 1993 (GPRA) requires Federal agencies to develop annual and strategic performance plans that establish performance goals, have concrete indicators of the extent that goals are achieved, and set performance targets. Each year, the agency is to issue a report that ''evaluate[s] the performance plan for the current fiscal year relative to the performance achieved toward the performance goals in the fiscal year covered by the report.'' Section 1116 (d)(2) of OMB Circular A–11, which implements the GPRA process, cites the Reports Consolidation Act of 2000 to emphasize the need for data validation by requiring that the agency's annual performance report ''contain an assessment of the completeness and reliability of the performance data included in it [that] * * * describes any material inadequacies in the completeness and reliability of the data.'' (OMB Circular

A–11, Section 230.2 (f)). The President's Management Agenda to improve the management and performance of the Federal government has emphasized the importance of complete information for program monitoring and improving program results.

In 2002, the Department required states to implement a UI DV program with a target of completing installation of the program by July 31, 2003, and submitting summary validation reports by September 30, 2003. The UI DV system is an extension of the Workload Validation (WV) program that all State Employment Security Agencies were required to operate between the mid-1970s and 2000. The WV program checked the validity of 29 report elements on four required UI reports, because they are combined into the ''workload items'' used apportion each State's share of funds appropriated for the administration of the UI program. The UI DV program employs a refined and automated version of WV's basic validation approach to review 1275 elements reported on 12 benefits reports and one tax report. The Department uses many of these elements for key performance measures as well as for the original workload items.

II. Desired Focus of Comments

Currently, the Department is soliciting comments concerning the extension of the UI DV Program which:

- Evaluate whether the proposed collection of information is necessary for the proper performance of the functions of the agency, including whether the information will have practical utility;
- Evaluate the accuracy of the agency's estimate of the burden of the proposed collection of information, including the validity of the methodology and assumptions used;
- Enhance the quality, utility, and clarity of the information to be collected; and
- Minimize the burden of the collection of information on those who are to respond, including through the use of appropriate automated, electronic, mechanical, or other technological collection techniques or other forms of information technology, *e.g.,* permitting electronic submission of responses.

A copy of the proposed information collection request can be obtained by contacting the office listed above in the addressee section of this notice.

III. Current Actions

The validation process assesses the validity (accuracy) of the counts of transactions or measurements of status as follows. In the validation process, guided by a detailed handbook, the state first constructs extract files containing all pertinent individual transactions for the desired report period to be validated. Each transaction contains the necessary characteristics or dimensions that enable it to be summed into an independent recount of what the state has already reported. Standardized software edits the extract file, *e.g.,* to remove duplicate transactions, then aggregates the transactions to produce an independent reconstruction or ''validation count'' of the reported figure. The reported count is considered valid by this ''quantity'' validation test if it is within ±2% of the validation count (±1% for a GPRA related element). The software also draws samples of most transaction types from the extract files; guided by a state-specific handbook, the validators review these against documentation in the state's management information system to determine whether the transactions in the extract file are supported by system documentation and thus that the validation count can be trusted as accurate. The extract files are considered to pass this ''quality'' review if random samples indicate they contain no more than 5% reporting errors.

During FY 2005 and beyond, all states will be required to conduct a complete validation every three years. There are two exceptions to this rule: (1) groups of reported counts that are summed for purposes of making a Pass/Fail determination and do not pass validation by being within ±2% of the reconstructed counts (±1% in the case of report elements used to calculate GPRA measures) must be revalidated within one year; the same is true for random samples that show that the underlying population from which they are drawn contains more than 5% of its transactions in error; and (2) all samples and counts used for GPRA measures must be validated annually regardless of whether they pass validity standards or not.

Type of Review: Extension.

Agency: Employment and Training Administration.

Title: Unemployment Insurance Data Validation Program (ETA Handbook 361).

OMB Number: 1205–0431.

Record Keeping: States are required to retain validation results and supporting documentation for three years to support an audit.

Affected Public: State Workforce Agencies (SWAs).

Frequency: Annual.

Total Respondents: 53 SWAs.

Total Responses: 53 per year.

Estimated Time Per Response: SWA staff—550 hours.

Total Burden Hours: 29,150 hours.

Total Burden Cost (capital/startup): N/A.

Total Burden Cost (operating/maintaining): $946,792.

Comments submitted in response to this notice will be summarized and/or included in the request for OMB approval of the information collection request; they will also become a matter of public record.

Dated: July 8, 2004, in Washington, DC.

Cheryl Atkinson,

Administrator, Office of Workforce Security.

[FR Doc. 04–16058 Filed 7–14–04; 8:45 am]

BILLING CODE 4510–30–P

MARINE MAMMAL COMMISSION

Meeting of Advisory Committee on Acoustic Impacts on Marine Mammals

AGENCY: Marine Mammal Commission.

ACTION: Notice of advisory committee meeting.

SUMMARY: The Marine Mammal Commission (Commission) will hold the third meeting of its Advisory Committee on Acoustic Impacts on Marine Mammals (Committee) 27–29 July 2004 in San Francisco, CA.

DATES: The Committee will meet Tuesday, July 27, 2004, from 9 a.m. to 5 p.m.; Wednesday, July 28, from 8:30 a.m. to 5 p.m.; and Thursday, July 29, from 8:30 a.m. to 5 p.m. This meeting is open to the public. These times and the agenda topics described below are subject to change. Please refer to the Commission's Web site (*www.mmc.gov*) for the most up-to-date meeting information. The Committee's fourth public meeting is scheduled for 30 November–2 December 2004 in New Orleans, LA. Further information on that meeting will be published in the **Federal Register** and posted on the Commission's Web site.

ADDRESSES: The July 27–29 meeting will be held at the Crowne Plaza Union Square, 480 Sutter Street, San Francisco, CA 94108, phone (415) 398–8900 or (888) 218–0808, fax (415) 989–8823, *http://www.ichotelsgroup.com/h/d/cp/1/en/hd/sfous*.

FOR FURTHER INFORMATION CONTACT: Erin Vos, Sound Project Manager, Marine Mammal Commission, 4340 East-West Hwy., Rm. 905, Bethesda, MD 20814, e-mail: *evos@mmc.gov*, tel.: (301) 504–0087, fax: (301) 504–0099; or visit the Commission's Web site at *www.mmc.gov*.

SUPPLEMENTARY INFORMATION: This meeting is to be held pursuant to the directive in the Omnibus Appropriations Act of 2003 (Pub. L. 108–7) that the Commission convene a conference or series of conferences to ''share findings, survey acoustic threats' to marine mammals, and develop means of reducing those threats while maintaining the oceans as a global highway of international commerce.'' The meeting agenda includes presentations and discussions related to: (1) The draft report from the Subcommittee on Synthesis of Current Knowledge, (2) marine mammal research and funding processes, (3) potential barriers to research that advances our knowledge about acoustic impacts on marine mammals, and (4) progress made by the Subcommittee on Management and Mitigation. The agenda also includes two public comment sessions. Guidelines for making public comments, background documents, and the meeting agenda, including the specific times of public comment periods, will be posted on the Commission's Web site prior to the meeting. Written comments may be submitted at the meeting.

Dated: July 9, 2004.

David Cottingham,

Executive Director.

[FR Doc. 04–15995 Filed 7–14–04; 8:45 am]

BILLING CODE 6820–31–M

FEDERAL MINE SAFETY AND HEALTH REVIEW COMMISSION

Sunshine Act Meeting

July 8, 2004.

TIME AND DATE: 10 a.m., Thursday, July 15, 2004.

PLACE: The Richard V. Backley Hearing Room, 9th Floor, 601 New Jersey Avenue, NW., Washington, DC.

STATUS: Open.

MATTERS TO BE CONSIDERED: The Commission will consider and act upon the following in open session:

Secretary of Labor v. *Twentymile Coal Company*, Docket No. WEST 2002–194. (Issues include whether the judge correctly determined that the Secretary of Labor properly cited Twentymile Coal Company for violations of mandatory safety standards committed by its independent contractor.)

The Commission heard oral argument in this matter on June 29, 2004.

Any person attending this oral argument who requires special accessibility features and/or auxiliary aids, such as sign language interpreters, must inform the Commission in advance of those needs. Subject to 29 CFR 2706.150(a)(3) and 2706.160(d).

CONTACT PERSON FOR MORE INFO: Jean Ellen (202) 434–9950/(202) 708–9300 for TDD Relay/1–800–877–8339 for toll free.

Jean H. Ellen,

Chief Docket Clerk.

[FR Doc. 04–16197 Filed 7–13–04; 8:45 am]

BILLING CODE 6735–01–M

NATIONAL AERONAUTICS AND SPACE ADMINISTRATION

[Notice 04–090]

National Environmental Policy Act and Executive Order 11990, Protection of Wetlands; International Space Research Park at the John F. Kennedy Space Center, Florida

AGENCY: National Aeronautics and Space Administration.

ACTION: Notice of availability of the Final Environmental Impact Statement (FEIS) for the International Space Research Park (ISRP) at the John F. Kennedy Space Center (KSC).

SUMMARY: Pursuant to the National Environmental Policy Act of 1969 (NEPA), as amended (42 U.S.C. 4321 *et seq.*), the Council on Environmental Quality Regulations for Implementing the Procedural Provisions of NEPA (40 CFR Parts 1500–1508), and the National Aeronautics and Space Administration (NASA) policy and procedures (14 CFR Part 1216), NASA has prepared a FEIS for the proposed ISRP at KSC, located in Florida. KSC is a major Center within NASA for activities associated with the Space Shuttle and International Space Station and is adjacent to Cape Canaveral Air Force Station from which many NASA missions are launched. The purpose of the ISRP is to facilitate world-class research and development (R&D) in areas critical to the long-term success of KSC, its users, and operators. NASA has entered into an agreement with the State of Florida, through the Florida Space Authority (FSA), to jointly study the development of up to 160 ha (400 ac) of land on KSC as a research park. NASA is proposing to lease approximately 142 ha (360 ac) in phases to the State of Florida (through the FSA), which would create an ISRP Authority (ISRPA) to develop and manage the site for the ISRP. The FEIS describes the potential environmental impacts and proposed mitigation associated with development alternatives under the proposed concept as well as the no-action alternative.

DATES: NASA will take no final action on the ISRP before 30 days from the date of publication in the **Federal Register** of the U.S. Environmental Protection Agency's notice of availability of the ISRP FEIS.

ADDRESSES: The FEIS may be reviewed at the following locations of the Brevard County Library:

(a) Central Brevard Library & Reference Center, 308 Forrest Ave., Cocoa, FL 32922, (321) 633–1792.

(b) Cocoa Beach Branch Library, 550 North Brevard Ave, Cocoa Beach, FL 32931, (321) 868–1104.

(c) Melbourne Branch Library, 540 E. Fee Ave., Melbourne, FL 32901, (321) 952–4514.

(d) Merritt Island Branch Library, 1195 North Courtenay Parkway Merritt Island, FL 32953, (321) 455–1369.

(e) St. Johns Branch Library, 6500 Carole Ave., Port St. John, FL 32927, (321) 633–1867.

(f) North Brevard Branch Library, 2121 S. Hopkins Ave., Titusville, FL 32780, (321) 264–5026.

The FEIS may also be examined at the following NASA locations by contacting the pertinent Freedom of Information Act Office:

(g) NASA, Ames Research Center, Moffett Field, CA 94035 (650–604–1181).

(h) NASA, Dryden Flight Research Center, P.O. Box 273, Edwards, CA 93523 (661–276–2704).

(i) NASA, Glenn Research Center at Lewis Field, 21000 Brookpark Road, Cleveland, OH 44135 (216–433–2755).

(j) NASA, Goddard Space Flight Center, Greenbelt Road, Greenbelt, MD 20771 (301–286–0730).

(k) NASA, Johnson Space Center, Houston, TX 77058 (281–483–8612).

(l) NASA, Langley Research Center, Hampton, VA 23681 (757–864–2497).

(m) NASA, Marshall Space Flight Center, Huntsville, AL 35812 (256–544–2030).

(n) NASA, Stennis Space Center, MS 39529 (228–688–2164).

In addition, the FEIS may be examined at the following locations:

(o) NASA Headquarters, Library, Room lJ20, 300 E Street SW., Washington, DC 20546 (202–358–0167).

(p) Jet Propulsion Laboratory, Visitors Lobby, Building 249, 4800 Oak Grove Drive, Pasadena, CA 91109 (818–354–5179).

The FEIS can be accessed electronically at *http://eis.ksc.nasa.gov/index.cfm.*

Limited copies of the FEIS are available, on a first request basis, by contacting Mr. Mario Busacca, NASA, Mail Code TA–C3, Kennedy Space

Center, Florida 32899; Telephone: 321–867–8456; e-mail: *mario.busacca-1@nasa.gov*.

Submit all comments in writing to Mr. Mario Busacca, NASA, Mail Code TA–C3, Kennedy Space Center, Florida 32899, or electronically to *mario.busacca-1@nasa.gov*.

FOR FURTHER INFORMATION CONTACT: Mr. Mario Busacca, NASA, Mail Code TA–C3, Kennedy Space Center, Florida, 32899; Telephone: 321–867–8456; e-mail: *mario.busacca-1@nasa.gov*.

SUPPLEMENTARY INFORMATION: The Notice of Availability of the Draft EIS (DEIS) was published by NASA in the **Federal Register** on January 27, 2004. Copies of the DEIS were sent to more than 180 public agencies, private organizations, and individuals. Fifteen individuals and organizations provided comments on the DEIS. Their comments and the NASA responses are provided in Appendix M of the FEIS. All 15 commentators indicated that Alternative 1 was the most acceptable alternative. The Merritt Island Homeowners Association continued to raise concerns regarding the increase in traffic on Merritt Island, Florida. No other major issues were raised.

The ISRP is intended to support NASA's mission, facilitate public-private collaboration, provide for complementary R&D objectives, and further space commercialization and development, consistent with the Space Act of 1958, as amended to authorize Enhanced-Use Leasing. The mission of the FSA, which would collaborate with NASA in developing the ISRP, is to retain, expand, and diversify the State's space-related industry. As described in the FEIS, the FSA would create an ISRPA under Florida State law to develop and manage the proposed ISRP. As a center for R&D, the ISRP would bring together a dynamic mix of industry, academia, and government researchers to focus their combined strengths in areas of R&D critical to the long-term success of NASA and its partners, including, but not limited to, the FSA.

Study Area and Project Alternatives

Study Area: Kennedy Space Center occupies 56,500 ha (139,490 ac) of land located within Brevard and Volusia Counties and controlled by NASA. The study area includes KSC, Brevard County, and the five adjoining counties (Indian River, Orange, Osceola, Seminole, and Volusia). The alternative development sites proposed for the ISRP are located on KSC along the south portion of Kennedy Parkway South (also known as State Road 3). Kennedy Parkway South is the major north-south transportation arterial that allows public ingress and egress through KSC into Merritt Island and Titusville.

Project Alternatives: Alternatives for development of the ISRP at KSC include: Alternative 1, Alternative 2, and Alternative 3 (No Action Alternative). The first two alternative actions involve developing and operating the ISRP at alternate locations on KSC. The third alternative, the No Action Alternative, involves not developing the ISRP at KSC at this time and continuing present management of the study area.

Alternative 1 (Preferred Alternative): In Alternative 1, NASA proposes the development of the ISRP on approximately 140 ha (345 ac) of KSC property to the west of Kennedy Parkway South (State Road 3). Development and related construction activities would occur on land located immediately south of the KSC Visitors Complex along Space Commerce Way. Approximately 130 ha (321 ac) of the development (Phases A–E) would occur on the west side of Space Commerce Way. Phase F would occur on a 10 ha (24 ac) parcel east of Space Commerce Way, adjacent to and west of the Space Experiments Research and Processing Laboratory (SERPL). The larger area (Phases A–E) considered in Alternative 1 is dominated by citrus groves and includes remnant wetlands and disturbed habitats. The smaller area (Phase F) is undeveloped.

In Alternative 1, development would occur in 6 phases (Phases A–F) over 25 parcels, which would be serviced by approximately 4.5 kilometers (km) (2.8 miles (mi)) of roads. The parcels range from 1.8 to 10.2 ha (4.5 to 25.3 ac) in size with developable acreage between 1.8 and 6.2 ha (4.5 and 15.4 ac). Some parcels have dedicated no-build zones due to existing wetlands and stormwater ponds. The stormwater ponds would become part of the master stormwater system for the park. The proposed stormwater management system includes 10 connected treatment ponds for the collection and treatment of runoff generated from the developed parcels. Parcels would be developed to include 35 percent open space overall. The open space would include a central greenway, which would offer sidewalks and pedestrian access along wetlands and stormwater retention areas.

Alternative 2: Alternative 2 proposes construction and development of the ISRP in six phases on approximately 130 ha (321 ac) located northeast of the KSC south security gate (Gate #3) on Kennedy Parkway South (State Road 3), near B Avenue SW (or Tel-4 Road). This alternative, like Alternative 1, also considered Phase F development of 10 ha (24 ac) east of Space Commerce Way, adjacent to and west of the SERPL. The combined areas considered in Alternative 2 are undeveloped and characterized by high quality pine flatwoods and scrub habitat embedded with wetlands.

The area considered in Alternative 2 (including Phase F) is defined by 26 parcels, which would be serviced by approximately 4.2 (km) (2.6 (mi)) of roads. Of the 26 parcels, 25 parcels are proposed for development. These parcels range in size from 1.6 to 10.0 ha (4.0 to 24.0 ac) with developable acreage from 1.5 to 5.6 ha (3.7 to 13.8 ac). A 34.7 ha (85.7 ac) parcel has been established under this development plan to protect an extensive wetlands system. Four stormwater management ponds are proposed for the collection and treatment of runoff generated from the developed parcels. The Alternative 2 land use plan offers extensive greenways and sidewalks for pedestrian access along the wetland conservation area and between parcels.

Alternative 3 (No Action Alternative): Under the No Action Alternative, no new development would be proposed regarding the ISRP on KSC. The No Action Alterative would result in continuing the present management of the two proposed sites at KSC. Under the No Action Alternative, land currently managed by the U.S. Fish and Wildlife Service (USFWS) would remain under USFWS management. Land leased through 2008 to the Kerr Foundation for citrus grove production would, after the lease expires, become part of the undeveloped KSC buffer, which is managed by the USFWS as part of the Merritt Island National Wildlife Refuge. The USFWS has long-term plans to restore the citrus groves to natural conditions.

NASA has selected Alternative 1 as the Preferred Alternative. The Preferred Alternative has been identified as the option that best meets NASA's purpose and need, and has the fewest significant environmental impacts compared to Alternative 2. Under both Alternatives 1 and 2 and even with the mitigation measures proposed in the FEIS, significant impacts would occur to air quality within KSC due to increased vehicular traffic and to soil composition, structure, and function on-site due to excavation and filling prior to construction. Unavoidable, significant air quality impacts would result from increased vehicular traffic, but would not cause the area to become a non-attainment area under the Clean Air Act for pollutants of concern: carbon

monoxide and particulate matter. However, under Alternative 2, the proposed ISRP would result in destruction of high quality scrub and wetlands habitat found at the Alterative 2 site.

To obtain more current data for Alternative 1, an Environmental Site Assessment (ESA), Phase I and II, was conducted to determine if the past practices related to citrus production have left soils or groundwater contamination on the site. (The ESA was finalized in March 2004, after the publication of the ISRP DEIS, and was therefore not included in that document.) The ESA was conducted in accordance with American Society for Testing and Materials (ASTM) E–1527, Phase I and ASTM E–1528, Phase II, Environmental Site Assessment Process. The results of the ESA are summarized here and the final report is included in Appendix L of the FEIS.

Phase I and Phase II sampling at the Alternative 1 site for contamination from the nearby Solid Waste Management Unit sites did not detect levels for many parameters. For other parameters, the levels did not exceed screening criteria. Thus, it was concluded that the Alternative 1 site has not been impacted by the Solid Waste Management Unit sites.

Phase I and Phase II sampling at the Alternative 1 site for contamination from citrus production activities detected arsenic and copper levels at three locations that exceeded residential human health screening criteria, but not industrial human health screening criteria. Thus, it was also concluded that the Alternative 1 site has been only minimally impacted by past citrus production. Copper values in Phase II sampling generally ranged from 16 to 75mg/kg. Copper levels in Samples ISRP–HA–11 and ISRP–HA–12, however, measured 380 and 310 mg/kg, respectively. Arsenic values in the samples generally ranged from 0.20 to 0.77 mg/kg. The arsenic level in Sample ISRP–HA–9, however, measured 3.0 mg/kg, which exceeded industrial human health screening criteria for arsenic. Although the elevated levels in the 3 samples exceed the Florida Department of Environmental Protection Soil Cleanup Target Levels (SCTL) of 110 mg/kg (copper) and 0.80 mg/kg (arsenic) for residential areas, they are below the SCTL of 7,600 mg/kg (copper) and 5 mg/kg (arsenic), respectively, for industrial areas (Florida Administrative Code (F.A.C.), Chapter 62–777). In addition, the arsenic level in Sample ISRP–HA–9 does not exceed the Florida Leachability criterion of 29 mg/kg (F.A.C., Chapter 62–777). Based on these criteria, no impact to ground or surface water is expected from these locations.

The ESA findings do not preclude the development of industrial activities, such as, but not limited to, the types of activities that would occur at the proposed ISRP, anywhere on the Alternative 1 site. Operation of the proposed ISRP would not impact the geology or soils. In addition, given that no residential development is planned for the ISRP, no mitigation or remediation is expected to be required prior to or during development. If a day care center were to be proposed later, the ISRPA, or NASA as the landowner, would conduct any necessary environmental reviews.

Under both alternatives, land use plans have been developed to mitigate wetlands impacts and manage stormwater flow pursuant to Executive Order 11988, Floodplains, and E.O. 11990, Protection of Wetlands. The proposed ISRPA, or NASA as the landowner, would develop a Wetlands Mitigation Plan and obtain a Section 404 Clean Water Act permit and a Florida Environmental Resources Permit (pursuant to the Florida Water Resources Act of 1972). If the terms and conditions of the USFWS Biological Opinion and State permits substantially change the proposed action or alternatives, NASA would conduct further environmental review.

Under both alternatives, land use plans and operations include measures to mitigate potential impacts to Federal and State listed species and critical habitat. Pursuant to Section 7 of the Endangered Species Act, NASA conducted formal consultation with the USFWS for the Preferred Alternative (Alternative 1) and obtained a Biological Opinion indicating No Jeopardy for the eastern indigo snake (*Drymarchon corais couperi.*) and no adverse modification to critical habitat if the recommended reasonable and prudent measures are implemented. The Biological Opinion approved incidental take of all eastern indigo snakes.

Under Alternative 2, potential direct, indirect, and cumulative impacts to protected wildlife and associated habitat are expected to be highly significant and the ability to mitigate impacts to below significance to be limited. If NASA were to select Alternative 2, NASA would prepare a Biological Assessment and enter into formal consultation to obtain a Biological Opinion for the following federally listed species: Florida scrub-jay (*Aphelocoma coerulescens*), eastern indigo snake, bald eagle (*Haliaeetus leucocephalus*), and freshwater swale marsh plants such as Curtiss reedgrass (*Calamovilfa curtissii* (*Vasey*) *Scribn.*). Further, under Alternative 2, State wildlife permits allowing incidental take or relocation of gopher tortoises and any State-listed commensals encountered on the proposed site would need to be obtained pursuant to Rules 68A–25.002 and 68A–27.005, F.A.C. If the terms and conditions of the USFWS Biological Opinion and State permits substantially changed the proposed action under Alternative 2, NASA would conduct further environmental review.

Future projects implemented by the proposed ISRPA in the context of the ISRP will be evaluated for NEPA compliance by the NASA KSC NEPA Document Manager to determine if the project's environmental impacts were adequately described in the FEIS. Any applicable mitigation measures will also be identified. If the project is not adequately covered by the FEIS, then NASA will determine what level of additional NEPA analysis may be required. In addition to the NEPA review, NASA, as a condition of the lease, will review projects proposed by its partner(s) for compliance with the ISRP Design Guide (described in the FEIS), as well as with applicable Federal, State, and local environmental, health, and safety laws, regulations, Executive Orders, and standards.

Olga M. Dominguez,

Deputy Assistant Administrator for Institutional and Corporate Management.

[FR Doc. 04–16077 Filed 7–14–04; 8:45 am]

BILLING CODE 7510–01–P

NATIONAL AERONAUTICS AND SPACE ADMINISTRATION

[Notice 04–085]

NASA Advisory Council, Space Science Advisory Committee; Meeting

AGENCY: National Aeronautics and Space Administration (NASA).

ACTION: Notice of meeting.

SUMMARY: In accordance with the Federal Advisory Committee Act, Public Law 92–463, as amended, the National Aeronautics and Space Administration announces a forthcoming meeting of the NASA Advisory Council (NAC), Space Science Advisory Committee (SScAC).

DATES: Wednesday, July 28, 2004, 1 p.m. to 5:30 p.m., Thursday, July 29, 2004, 8:30 a.m. to 5:30 p.m., and Friday, July 30, 2004, 8:30 a.m. to Noon.

ADDRESSES: Shelter Pointe Hotel and Marina, 1551 Island Drive, San Diego, CA 92106.

FOR FURTHER INFORMATION CONTACT: Ms. Marian R. Norris, Office of Space Science, National Aeronautics and Space Administration, Washington, DC 20546, (202) 358–4452.

SUPPLEMENTARY INFORMATION: The meeting will be open to the public up to the capacity of the room. The agenda for the meeting includes the following topics:

- Program Overview Status
- Subcommittee Reports
- Report on Explorer Program Phasing
- Status of Space Science Education and Public Outreach Programs
- Sounding Rockets Program Status
- Annual Review of Science Achievements for FY 2004 Government Performance Results Act Performance Report
- Update on NASA Reorganization

It is imperative that the meeting be held on these dates to accommodate the scheduling priorities of the key participants. Visitors to the meeting will be requested to sign a visitor's register.

R. Andrew Falcon,

Advisory Committee Management Officer, National Aeronautics and Space Administration.

[FR Doc. 04–16065 Filed 7–14–04; 8:45 am]

BILLING CODE 7510–01–P

NATIONAL AERONAUTICS AND SPACE ADMINISTRATION

[Notice 04–086]

NASA Advisory Council, Space Science Advisory Committee Sun-Earth Connection Advisory Subcommittee; Meeting

AGENCY: National Aeronautics and Space Administration (NASA).

ACTION: Notice of Meeting.

SUMMARY: The National Aeronautics and Space Administration announces a forthcoming meeting of the NASA Advisory Council (NAC), Space Science Advisory Committee (SScAC), Sun-Earth Connection Advisory Subcommittee (SECAS).

DATES: Monday, July 26, 2004, 8:30 a.m. to 5 p.m., Tuesday, July 27, 2004, 8:30 a.m. to 5:30 p.m., and Wednesday, July 28, 2004, 8:30 a.m. to Noon.

ADDRESSES: Shelter Pointe Hotel and Marina, 1551 Island Drive, San Diego, CA 92106.

FOR FURTHER INFORMATION CONTACT: Dr. Barbara Giles, Office of Space Science, National Aeronautics and Space Administration, Washington, DC 20546, (202) 358–1762, *barbara.giles@nasa.gov.*

SUPPLEMENTARY INFORMATION: The meeting will be open to the public up to the capacity of the room. The agenda for the meeting includes the following topics:

- Sun-Earth Connection Overview and Program Status.
- New Exploration Vision, Reorganization, Priorities.
- Reports from Sun-Earth Connection Management Operations Working Group.
- Government Performance Results Act FY 2004 Report.

It is imperative that the meeting be held on these dates to accommodate the scheduling priorities of the key participants. Visitors will be requested to sign a visitor's register.

R. Andrew Falcon,

Advisory Committee Management Officer, National Aeronautics and Space Administration.

[FR Doc. 04–16066 Filed 7–14–04; 8:45 am]

BILLING CODE 7510–01–P

NATIONAL AERONAUTICS AND SPACE ADMINISTRATION

[Notice 04–087]

NASA Space Science Advisory Committee, Structure and Evolution of the Universe Subcommittee; Meeting

AGENCY: National Aeronautics and Space Administration (NASA).

ACTION: Notice of meeting.

SUMMARY: The National Aeronautics and Space Administration announces a meeting of the NASA Space Science Advisory Committee (SScAC), Structure and Evolution of the Universe Subcommittee (SEUS).

DATES: Monday, July 26, 2004, 8:30 a.m. to 6 p.m., Tuesday, July 27, 2004, 8:30 a.m. to 5 p.m., and Wednesday, July 28, 2004, 8:30 a.m. to Noon.

ADDRESSES: Shelter Pointe Hotel and Marina, 1551 Island Drive, San Diego, CA 92106.

FOR FURTHER INFORMATION CONTACT: Dr. Michael Salamon, Code SZ, National Aeronautics and Space Administration, Washington, DC 20546, (202) 358–0441, *michael.h.salamon@nasa.gov.*

SUPPLEMENTARY INFORMATION: The meeting will be open to the public up to the seating capacity of the room. The agenda for the meeting is as follows:

- Astronomy and Physics Update
- Explorer Program Update
- Structure and Evolution of the Universe Theme Update
- Government Performance Results Act Evaluations
- Structure and Evolution of the Universe Roadmap Effort

It is imperative that the meeting be held on these dates to accommodate the scheduling priorities of the key participants. Visitors will be requested to sign a visitor's register.

R. Andrew Falcon,

Advisory Committee Management Officer, National Aeronautics and Space Administration.

[FR Doc. 04–16067 Filed 7–14–04; 8:45 am]

BILLING CODE 7510–01–P

NATIONAL AERONAUTICS AND SPACE ADMINISTRATION

[Notice 04–088]

NASA Space Science Advisory Committee, Astronomical Search for Origins and Planetary Systems Subcommittee; Meeting

AGENCY: National Aeronautics and Space Administration (NASA).

ACTION: Notice of Meeting.

SUMMARY: The National Aeronautics and Space Administration announces a meeting of the NASA Space Science Advisory Committee (SScAC), Astronomical Search for Origins and Planetary Systems Subcommittee (OS).

DATES: Monday, July 26, 2004, 9 a.m. to 6 p.m., Tuesday, July 27, 2004, 8:30 a.m. to 5 p.m., and Wednesday, July 28, 2004, 8:30 a.m. to Noon.

ADDRESSES: Shelter Pointe Hotel and Marina, 1551 Island Drive, San Diego, CA 92106.

FOR FURTHER INFORMATION CONTACT: Dr. Hashima Hasan, Office of Space Science, National Aeronautics and Space Administration, Washington, DC 20546, 202/395–0710, *hhasan@hq.nasa.gov.*

SUPPLEMENTARY INFORMATION: The meeting will be open to the public up to the seating capacity of the room. The agenda for the meeting is as follows:

- Astronomy and Physics Director's Report on Astronomy and Physics Programs.
- Theme Scientist's Report on Origins Theme Program.
- James Webb Space Telescope, Stratospheric Observatory for Infrared Astronomy, and Navigator Program Mission Updates.

It is imperative that the meeting be held on these dates to accommodate the scheduling priorities of the key

participants. Visitors will be requested to sign a visitor's register.

R. Andrew Falcon,

Advisory Committee Management Officer, National Aeronautics and Space Administration.

[FR Doc. 04–16068 Filed 7–14–04; 8:45 am]

BILLING CODE 7510–01–P

NATIONAL AERONAUTICS AND SPACE ADMINISTRATION

[Notice 04–089]

NASA Space Science Advisory Committee, Solar System Exploration Subcommittee; Meeting

AGENCY: National Aeronautics and Space Administration (NASA).

ACTION: Notice of Meeting.

SUMMARY: The National Aeronautics and Space Administration announces a meeting of the NASA Space Science Advisory Committee (SScAC), Solar System Exploration Subcommittee (SSES).

DATES: Monday, July 26, 2004, 8:30 a.m. to 5 p.m., and Tuesday, July 27, 2004, 8:30 a.m. to 5 p.m.

ADDRESSES: Shelter Pointe Hotel and Marina, 1551 Island Drive, San Diego, CA 92106.

FOR FURTHER INFORMATION CONTACT: Dr. Jay Bergstralh, Code SE, National Aeronautics and Space Administration, Washington, DC 20546, 202/358–0313, *jay.t.bergstralh@nasa.gov.*

SUPPLEMENTARY INFORMATION: The meeting will be open to the public up to the seating capacity of the room. The agenda for the meeting is as follows:

- 2005 Solar System Exploration Roadmap Progress Reports
- Summary of Recommendations from President's Commission on Implementation of U.S. Space Exploration Policy
- Status of Solar System Exploration
- Status of Mars Exploration Program
- Status of Space Science
- Government Performance Results Act Evaluation

It is imperative that the meeting be held on these dates to accommodate the scheduling priorities of the key participants. Visitors will be requested to sign a visitor's register.

R. Andrew Falcon,

Advisory Committee Management Officer, National Aeronautics and Space Administration.

[FR Doc. 04–16069 Filed 7–14–04; 8:45 am]

BILLING CODE 7510–01–P

NATIONAL FOUNDATION ON THE ARTS AND THE HUMANITIES

National Endowment for the Arts

Proposed Collection; Comment Request

ACTION: Notice.

SUMMARY: The National Endowment for the Arts (NEA), as part of its continuing effort to reduce paperwork and respondent burden, conducts a preclearance consultation program to provide the general public and federal agencies with an opportunity to comment on proposed and/or continuing collections of information in accordance with the Paperwork Reduction Act of 1995. This program helps to ensure that requested data can be provided in the desired format, reporting burden (time and financial resources) is minimized, collection instruments are clearly understood, and the impact of collection requirements on respondents can be properly assessed. Currently, the NEA is soliciting comments concerning the proposed information collection of: Blanket Justification for NEA Funding Application Guidelines and Reporting Requirements. A copy of the current information collection request can be obtained by contacting the office listed below in the **ADDRESSES** section of this notice.

DATES: Written comments must be submitted to the office listed in the **ADDRESSES** section below within 60 days from the date of this publication in the **Federal Register.** The NEA is particularly interested in comments which:

- Evaluate whether the proposed collection of information is necessary for the proper performance of the functions of the agency, including whether the information will have practical utility;
- Evaluate the accuracy of the agency's estimate of the burden of the proposed collection of information, including the validity of the methodology and assumptions used;
- Enhance the quality, utility, and clarity of the information to be collected; and
- Minimize the burden of the collection of information on those who are to respond, including through the use of appropriate automated, electronic, mechanical, or other technological collection techniques or other forms of information technology, *e.g.,* permitting electronic submissions of responses.

ADDRESSES: Send comments to A.B. Spellman, Deputy Chairman for Guidelines and Panel Operations, National Endowment for the Arts, 1100 Pennsylvania Avenue, NW., Room 516, Washington, DC 20506–0001, telephone (202) 682–5421 (this is not a toll-free number), fax (202) 682–5049.

Murray Welsh,

Director, Administrative Services, National Endowment for the Arts.

[FR Doc. 04–16085 Filed 7–14–04; 8:45 am]

BILLING CODE 7537–01–M

NATIONAL SCIENCE FOUNDATION

Sunshine Act Meeting Notice

AGENCY HOLDING MEETING: National Science Foundation, National Science Board, *Ad hoc* Committee on NSB Nominees Class of 2006–2012.

DATE AND TIME: July 15, 2004 2:30 p.m.–4 p.m.

PLACE: National Science Foundation, 4201 Wilson Boulevard, Arlington, VA 22230.

STATUS: This meeting will be closed to the public.

MATTERS TO BE CONSIDERED: Nominees for appointments as NSB members.

FOR FURTHER INFORMATION CONTACT: Dr. Michael P. Crosby, Executive Officer and NSB Office Director, (703) 292–7000, *www.nsf.gov/nsb.*

Michael P. Crosby,

Executive Officer and NSB Office Director.

[FR Doc. 04–16162 Filed 7–13–04; 10:26 am]

BILLING CODE 7555–01–P

NUCLEAR REGULATORY COMMISSION

[Docket No. PAPO–00, ASLBP No. 04–829–01–PAPO]

Atomic Safety and Licensing Board; Before Administrative Judges: Thomas S. Moore, Chairman, Alex S. Karlin, Alan S. Rosenthal; In the Matter of U.S. Department of Energy (High Level Waste Repository: Pre-Application Matters); Order (Initial Pre-License Application Phase Order)

July 9, 2004.

Pursuant to 10 CFR 2.1010(d) and 2.1013(c)(1), all filings, pleadings, and requests (collectively ''filings'') in this high level waste (HLW) repository pre-license application proceeding shall be submitted electronically to the pre-license application presiding officer (PAPO) Board, the other participants, and the Secretary of the Commission

(SECY). In accordance with the authority conferred upon the PAPO Board by 10 CFR 2.1010(e) and 2.319(g) and (q) to regulate the course of the proceeding and the conduct of the participants, this order sets forth general information concerning the agency's adjudicatory electronic information exchange system (EIE) as well as additional requirements and procedures that must be followed during this pre-license application phase.

I. Dual Electronic Submission

Electronic submission of filings and PAPO Board issuances shall be accomplished by (1) service via e-mail; and (2) service via the NRC's adjudicatory EIE. The adjudicatory EIE, which is a new electronic document exchange system, will eventually become the sole means of submission of documents in this proceeding. Until otherwise instructed by the Board, however, all filings must be submitted *both* by e-mail *and* by the adjudicatory EIE in accordance with the procedures outlined below.[1] Filings must be received no later than midnight Eastern Time on the date due.

II. Electronic Submission Via E-Mail

To complete e-mail service on the PAPO Board, a participant shall send the filing (which should include the certificate of service) as a file in Portable Document Format (PDF),[2] as an attachment to an e-mail message directed to *papo@nrc.gov*, the e-mail address of the PAPO Board. The participant serving the filing should also serve all other participants and SECY (e-mail address: *hearingdocket@nrc.gov*) in the same manner.

III. Electronic Submission Via the Adjudicatory EIE

The NRC adjudicatory EIE was designed to allow the NRC and participants in its proceedings, to submit and exchange material related to official agency business with its customers and other Federal agencies across the Internet. The system uses a public key infrastructure and digital signaturing technology to ensure that electronic documents can be transmitted via the Internet in a secure and unalterable manner. In this HLW pre-license application proceeding, filings are submitted via the adjudicatory EIE through the use of the HLW Submittal Form. A submitter must fill in the required fields of the form, electronically attach the filing to the form (much in the same way a document is attached to an e-mail message), and then submit the form and filing. Once a filing is submitted via the EIE, it will effect electronic service notice of the filing on the PAPO Board, SECY, and all other persons listed on the EIE official service list, which will be created and maintained by the Secretary. The service notice will be in the form of an e-mail advising the recipients that a document has been filed in the proceeding and providing them with an electronic link to the filing that will permit them to view and/or download the document. After the submitter receives confirmation from the EIE that the filing has been accepted, the submitter need not take any further action to serve the document via the EIE.

Appendix I to this order sets forth detailed instructions for obtaining a Digital ID, filing documents, and viewing filed documents. If participants encounter any problems while accessing the EIE, they should contact the EIE Administrator staff for technical assistance electronically (preferred method) by filling out a question/concern form at *http://www.nrc.gov/site-help/eie/feedback-eie.html,* or by telephone at 1–888–423–4082 between the hours of 7:15 a.m. and 4:30 p.m. e.t.

IV. Signature Requirement

This formal adjudicatory proceeding is being conducted under 10 CFR subpart J and informal letter practice is highly disfavored and inappropriate. In this regard, pursuant to 10 CFR 2.1010(e), each filing submitted herein shall be signed and dated by (1) an attorney having authority to do so; (2) an individual participant acting *pro se;* or (3) an authorized representative of an organization participating without counsel. The signature of the *pro se* individual, authorized representative, or counsel is a representation that the filing has been subscribed in the capacity specified with full authority, that he or she has read it and knows the contents, that to the best of his or her knowledge, information and belief the statements made in it are true, and that it is not interposed for delay. If a filing is not signed, or is signed with the intent to defeat the purpose of this section, it may be stricken.

Compliance with the signature requirement shall be effectuated via the EIE submission of filing as specified herein, and not via e-mail submission. In accordance with section 4.0 of the EIE Guidance Document each participant or its authorized representative or attorney shall digitally sign the HLW Submittal Form used to transmit the filing. Digital signature of the HLW Submittal Form by the authorized person shall be deemed equivalent to an original signature upon the transmitted filing.

V. Notice of Appearance

Pursuant to 10 CFR 2.1001 and 2.314(b), the first filing by any participant in this HLW pre-license application proceeding shall be accompanied by a notice of appearance from that participant's authorized representative or counsel containing all required information. The notice of appearance will provide the information necessary to establish and maintain a service list, so that participants can be accurately identified and duly notified during this phase of the proceeding.

VI. Format for Submissions

All filings in this proceeding by all participants—whether by e-mail or by the EIE—shall have the filing date printed on the top right-hand side of the first page of the submission. In addition, as outlined by the Commission in an addendum to CLI–04–20, 60 NRC__ (July 7, 2004), the caption used on this order should be used for all filings before the PAPO Board. At the right side of the caption, the participant shall number each of its LSN-related pleadings. Thus, for example, a participant's first request should be numbered [name of participant]-01. Its second request, on a different issue or subject, will be numbered [name of participant]-02. For instance, if a participant were to file a motion, the caption of its first filing would read as follows:

In the Matter of U.S. DEPARTMENT OF ENERGY (High Level Waste Repository: Pre-Application Matters)

Docket No. PAPO–00, ASLBP No. 04–829–01–PAPO, Name of Participant–01

The title of the filing then should be centered on the page and appear immediately below the caption. Thereafter, filings by that participant and any other participants regarding *that* motion should include *that* pleading number designation. For example, if the State of Nevada were to submit an initial motion in this proceeding, the caption would read as follows:

[1] The participants' experiences with the current EIE system may result in improvements and changes to the system as appropriate. Accordingly, the participants are encouraged to contact the EIE Administrator staff at *http://www.nrc.gov/site-help/eie/feedback-eie.html* with information regarding their experiences with the EIE system.

[2] Participants should consult pages 4–6 of the Guidance for Submission of Electronic Docket Materials under 10 CFR part 2, subpart J, (EIE Guidance Document)(at *http://www.nrc.gov/reading-rm/ehd/ml041560341.pdf*) for more information on preferred PDF output file formats and their recommended uses.

In the Matter of U.S. DEPARTMENT OF ENERGY (High Level Waste Repository: Pre-Application Matters)
Docket No. PAPO–00, ASLBP No. 04–829–01–PAPO NEV [3]–01

The caption for all subsequent filings relating to *that* motion (*e.g.*, Department of Energy answer, requests for extensions of time to file responses) would likewise read:

In the Matter of U.S. DEPARTMENT OF ENERGY (High Level Waste Repository: Pre-Application Matters)
Docket No. PAPO–00, ASLBP No. 04–829–01–PAPO, NEV–01

The caption for a subsequent filing by Nevada unrelated to that initial motion and, for example, seeking other relief would be NEV–02.

The Commission has also provided extensive guidance on the submission of materials in this HLW proceeding, including guidance on what types of documents may be submitted, parameters for electronic file submission, and optical storage media submissions, as well as sample transmittal letters and corresponding EIE forms. Participants are urged to consult and observe the guidance provided in ''Guidance for Submission of Electronic Docket Materials Under 10 CFR Part 2, Subpart J.''

It is so *ordered.*

For the pre-license application presiding officer board.[4]

Rockville, Maryland, July 9, 2004.

Thomas S. Moore,

Chairman, Administrative Judge.

Appendix I

Prior to filing and viewing documents via the EIE, each person must (1) obtain a digital signature certificate (Digital ID), and (2) be placed on the official service list for the proceeding.

A. Obtaining a Digital ID

Each person who wishes to use the EIE (including administrative or support personnel who will actually transmit the document to the EIE) must first obtain a Digital ID in order to digitally sign and submit the form used to transmit documents and to access the EIE external server to retrieve and view documents. Additionally, there is a software plug-in that must be downloaded and installed in order to view the EIE document submittal form. To avoid technical difficulties, it is highly recommended that participants use Internet Explorer, rather than Netscape, to access the EIE. Participants should also be aware that obtaining a Digital ID is not an automated, instantaneous process. Participants should begin the process for requesting a Digital ID well in advance of the date they wish to begin submitting documents via the EIE. Obtaining a Digital ID requires both SECY and EIE Administrator approval of an enrollment request, which could take up to several business days for a response. A Digital ID can be obtained by following these steps:

1. E-mail a request to SECY (e-mail address *hearingdocket@nrc.gov*), and include your name, participant affiliation, telephone number, and e-mail address. A request for a Digital ID will also serve as a request to be placed on the official service list for the proceeding. If the request is approved, SECY will so notify the EIE Administrator. You do not need to wait for a response from SECY to proceed to the next steps.

2. Access the NRC's home page (*http://www.nrc.gov*) and click on ''EIE: e-submittals,'' which appears in the column on the far left-hand side of the screen.[5]

3. Scroll down the page and click on the ''First Time Users: Instructions'' bullet point.

4. Under ''Browser Set Up,'' click on the ''Download'' link and follow the prompts to download the UWI viewer, which will allow you to view documents that have been filed via the EIE.

5. Once the viewer download has completed, the viewer must now be installed. Find the UWI viewer on the computer's C drive (the application name is ''icsv460kg.exe''). Open the application and follow the prompts to install the viewer onto the computer.

6. Close the installation wizard and return to the NRC Web page for ''EIE Instructions for First-Time Users'' (*http://www.nrc.gov/site-help/eie/how-to.html*).

7. Scroll down the page to ''Step 3'' and click on the text, ''go to the Verisign/NRC Page.''

8. Click on the first link, ''Enroll for a Digital ID.''

9. Complete the enrollment form as indicated. Under ''Step 4: Select the Cryptographic Service,'' the form will default to the appropriate service provider name. Under ''Step 5: Additional Security for Your Private Key,'' you may choose to check the ''Protect Your Private Key'' box, but it is not necessary to do so for enrollment.

10. After completing the enrollment form, click on the ''Accept'' button, and the enrollment request will be sent to the Administrator. You should receive an e-mail from the Administrator confirming your Digital ID enrollment request.

11. Once the request has been approved by SECY and the Administrator has been so notified, a second e-mail will follow with detailed instructions for retrieving and installing your Digital ID. The process for requesting, retrieving, and installing the Digital ID is computer-specific; that is, the computer used to send the enrollment form must also be used to retrieve and install the Digital ID. Once the Digital ID certificate has been installed, the certificate may be exported or moved to additional computers (*e.g.*, a laptop).[6] After installing the Digital ID, you will be able to submit documents using the EIE and view documents served by other participants using the EIE.

B. Submitting Documents Via the Electronic Information Exchange

Documents submitted via the EIE must be filed using the HLW Submittal Form. This form allows participants to sign, enclose (*i.e.,* attach), submit, and verify documents over the Internet. A submitter must fill in the required fields of the form, attach the document to be filed, and then digitally sign the form by using the submitter's unique Digital ID.[7] Documents submitted via the EIE are limited in size to 50 MB or smaller. Documents larger than 50 MB must be

[3] In connection with development of the License Support Network (LSN) for use in this HLW proceeding, each LSN participant and potential participant was assigned a three-letter LSN participant code. For consistency, participants should use these LSN participant codes in their filings before the PAPO Board when referring to themselves or to other participants, after identifying the full name of the participant the first time it appears in the document. A list of these codes is appended to this order as Appendix II. For participants that have not yet been assigned a three-letter code, the PAPO Board will assign a code to those participants and so inform the other participants in a later issuance.

[4] Copies of this order were sent by the Office of the Secretary this date by e-mail transmission to those served with the Commission Order in CLI–04–20. In addition, a copy of this order is being submitted for publication in the **Federal Register**.

[5] The agency currently is considering changes to its EIE Web pages that may affect the wording or location of the particular headings described in these instructions. When these changes are effectuated, the PAPO Board will endeavor to advise participants.

[6] For further instructions on importing and exporting Digital ID certificates, access the NRC Web page for electronic submittals at *http://www.nrc.gov/site-help/eie.html.* On the far right-hand side of the screen, under the first bullet point (''If your PC is to be upgraded * * *''), click on the link to Internet Explorer, and follow the instructions provided.

[7] It should be noted that although the submiter is digitally signing only the submittal form, this is deemed as the signature, by the participant, or its authorized representative or attorney, of the attached document actually being filed.

broken up and submitted in segments of 50 MB or less (*see* section B.3 below). Additional instructions are provided below (*see* sections B.2 and 4) for filing documents that are, or could potentially be, subject to a protective order and documents that are required to be filed under oath or affirmation.

1. *''Simple'' Documents.* To submit a ''simple'' filing (*i.e.*, one that is 50 MB or less, not subject to protective order, and not required to be filed under oath or affirmation):

(1) Access the NRC's EIE Web page *(http://www.nrc.gov/site-help/eie.html),* and scroll down the page to the first bullet point. Click on ''Document Submittal Forms.''

(2) Click on third bullet point, ''HLW Hearing Pilot.''

(3) You will be prompted to select the ASLBP number, which will depend on which Licensing Board you are appearing before, from the drop-down menu.

(4) Leave the ''Check this box if 'Protective Order''' box unchecked, and click on the ''Go'' button.

(5) Fill in the fields of the HLW Submittal Form:

(a) The ''ASLBP #'' and ''Panel Judges'' fields will be automatically populated.

(b) For the pre-license application phase of this proceeding, fill in the ''LSN #'' field as ''None.''

(c) Fill in the ''Author Name'' and ''Author Affiliation'' fields with the submitter's information (*e.g.*, attorney's name and law firm).

(d) The ''Document Date'' field must be submitted in MM/DD/YYYY format (*e.g.*, 07/01/2004).

(e) Fill in the ''Document Title'' field as appropriate, and select the appropriate ''Document Type'' from the drop-down menu.

(f) Fill in the ''Party Identifier'' field as appropriate (*e.g.*, Department of Energy)

(g) Leave the ''multi-part submission'' box unchecked.

(6) The default setting on the HLW Submittal Form is to notify all persons on the service list of the document's filing. To view the service list, click on the ''Click for Service List'' button. The ''Notify'' boxes to the far right of the screen have been automatically checked so that each recipient on the service list will be notified of the document's filing. You may choose to not serve certain individuals by unchecking the boxes next to their names. To return to the HLW Submittal Form, click on the ''Back to Main Form'' button.

(7) To attach the document being filed, click on the ''Attach File'' button near the bottom of the screen.

(8) When the ''Attachments'' dialog box appears, click on the ''Attach'' button to browse through the computer's folders and files for the document to be filed.

(9) More than one file may be attached to the HLW Submittal Form, so long as the total size of the submittal does not exceed 50 MB (*e.g.*, a transmittal letter, pleading, and several exhibits may be attached to and submitted under the same form).

(10) To attach additional files, click on the ''Attach'' button again to browse through the computer's folders and files.

(11) When all of the appropriate files have been attached, click on the ''Done'' button to return to the HLW Submittal Form. To verify which documents have been attached to the Submittal Form, you may click on the ''Attach File'' button to view the attached documents.

(12) To remove an attached file from the Submittal Form, click on the ''Remove File'' button. Highlight the file you wish to remove, and click on the ''Remove'' button. Click ''Done'' to return to the HLW Submittal Form.

(13) When you are finished attaching the appropriate files, click on the ''Click to Authorize Transmission'' button.

(14) When the Digital Signature viewer appears, click on the ''Sign'' button to digitally sign the submittal form.

(15) When the digital signature has been confirmed as valid, click on the ''OK'' button to return to the HLW Submittal Form. The submitter's name and e-mail address should now appear in place of the ''Click to Authorize Transmission'' button.

(a) Once the submittal form has been digitally signed, the form cannot be altered. If changes need to be made to the form or to the attachments prior to submitting the filing, click on the button where the submitter's name and e-mail address appear.

(b) When the Digital Signature viewer appears, click on the ''Delete'' button to remove the digital signature. Click on the ''OK'' button to return to the submittal form. Changes may now be made to the form and attachments. After the necessary modifications have been made, repeat Steps (13) through (15) above to digitally sign the submittal form.

(16) Click on the ''Submit Document'' button to transmit the document to the EIE. Shortly after the document has been submitted, the submitter should receive confirmation that the document has been submitted and that an e-mail has been sent to each person on the service list notifying the recipient that the filing is available for viewing.

2. *Sensitive Documents.* Documents that are, or could potentially be, subject to a protective order are submitted in much the same way as ''simple'' documents are. (Please note: Whether particular classes of sensitive documents (*e.g.*, proprietary, privacy, etc.) should be submitted through the EIE generally is a matter to be determined by the PAPO Board, in consultation with the participants, and memorialized in an appropriate protective order. Participants are urged to contact the PAPO Board to request entry of an appropriate protective order prior to submitting any documents that may have a sensitive status.)

(1) Access the HLW Submittal Form by going to the following Web page: *http://www.nrc.gov/site-help/eie/document-submittal-forms.html,* and clicking on the ''HLW Hearing Pilot'' bullet point.

(2) After selecting the appropriate ASLBP number from the drop-down menu, check box labeled ''Check this box if 'Protective Order,' '' and click on the ''Go'' button.

(3) Fill in the fields of the HLW Submittal Form as indicated in Step (5) above in section B.1.

(4) For documents that are subject to a protective order, the default setting for the service list is to not notify any of the recipients. To notify the recipients who are authorized to see the protected information, you must manually check the ''Notify'' boxes next to their names.

(5) The procedures for attaching documents, digitally signing the form, and submitting the form are the same as those set forth in Steps (7) through (16) above in section B.1.

3. *Large Documents.* Documents larger than 50 MB must be broken up into smaller segments, which must be saved as separate documents. The EIE's multi-part submission function will then ''bundle'' these smaller documents together so that recipients will know that the separate documents are part of a larger submission. To file a large document in multiple parts:

(1) Access the HLW Submittal Form by going to the following Web page: *http://www.nrc.gov/site-help/eie/document-submittal-forms.html,* and clicking on the ''HLW Hearing Pilot'' bullet point.

(2) After selecting the appropriate ASLBP number from the drop-down menu, click on the ''Go'' button.

(3) Fill in the fields of the HLW Submittal Form as indicated in Step (5) above in section B.1.

(4) In the yellow box to the right of the screen, check the box labeled ''Check if this is part of a multi-part submission.''

(5) From the ''Select a Bundle'' drop-down menu, choose ''New Bundle.''

(6) Attach the first segment of the document by clicking on the ''Attach File'' button and then clicking on the ''Attach'' button when the ''Attachments'' dialog box appears to browse through the computer's folders and files for the document to be filed. Click on the ''Done'' button to return to the HLW Submittal Form.

(7) Follow the procedures for digitally signing and submitting the form set forth in Steps (7) through (16) above in section B.1.

(8) To send the second segment of the document, access the HLW Submittal Form and fill in all fields as appropriate.

(9) Check the appropriate box to indicate that the document is part of a multi-part submission.

(10) From the ''Select a Bundle'' drop-down menu, select the bundle name, which will be labeled by ASLBP number, date, and the first 64 characters of the document title. If this segment is the final part of the submission (*i.e.*, part 2 of 2), check the box labeled ''Check if this is the final part of your multi-part submission.''

(11) Attach the segment and digitally sign and submit the submittal form as indicated above in Steps (6) and (7) of this section. The notification e-mail sent to the recipients will indicate that the filed document is part of a larger submission. In addition, when the recipients visit the link provided in the e-mail, the submittal form will also indicate that the document is part of a multi-part submission.

4. *Oath or Affirmation.* For documents that are required to be filed under oath or affirmation, refer to page 16 of the Commission's guidance document, ''Guidance for Submission of Electronic Docket Materials under 10 CFR Part 2, Subpart J'' (found at: *http://www.nrc.gov/reading-rm/ehd/ml041560341.pdf*).

C. Viewing Documents Filed Via the Electronic Information Exchange

Once a document has been filed via the EIE, within a short time, service list recipients will receive an e-mail notifying them that a filing has been made in the proceeding. Recipients can then access the filing by clicking on the URL provided in the e-mail. The form used by the submitter to file the document via the EIE is the same form that will appear after clicking on the link and can be used by recipients to access and view the filing. Documents may be viewed and saved in this manner:

1. Click on the URL provided in the notification e-mail to retrieve the filing.

2. The HLW submittal form will appear as it was filled out and filed by the submitter. Recipients will not be able to alter any part of the submittal form. Recipients will, however, be able to view the service list, extract (*i.e.*, save) the file, and view the file.

3. To save the filing to the recipient's hard drive or network drive, click on the ''Extract File'' button and save the file to the desired location.

4. To view the document, click on the ''View'' button. When the ''File Download'' dialog box appears, click on the ''Open'' button. Although ''Save'' appears as an option in the ''File Download'' dialog box, the EIE will not permit recipients to save the document in this manner; to save the document, use either the ''Extract File'' button or the ''save'' function in the Adobe Acrobat viewer after viewing the document.

As indicated in the order, technical questions concerning access to the EIE should be directed to the EIE Administrator via the Internet (*http://www.nrc.gov/site-help/eie/feedback-eie.html*) or via telephone at 1–888–423–4082.

APPENDIX II

Participant	Participant code
Churchill County, Nevada	CHU
Clark County, Nevada	CLK
Department of Energy	DEN
Esmeralda County, Nevada	ESM
Eureka County, Nevada	EUR
Inyo County, California	NYA
Lander County, Nevada	LND
Las Vegas, Nevada	LAS
Lincoln County, Nevada	LNC
Mineral County, Nevada	MNE
National Congress of American Indians.	NCA
Nevada	NEV
Nuclear Energy Institute	NEN
Nuclear Regulatory Commission.	NRC
Nye County, Nevada	NYE
White Pine County, Nevada	WHP

[FR Doc. 04–16034 Filed 7–14–04; 8:45 am]

BILLING CODE 7590–01–P

OFFICE OF MANAGEMENT AND BUDGET

Proposed Information Collection Activities; Request For Comments

AGENCY: Office of Management and Budget.

ACTION: Notice.

SUMMARY: In accordance with the Paperwork Reduction Act (44 U.S.C. 3501 *et seq.*), the Office of Management and Budget (OMB) invites the general public and Federal agencies to comment on the renewal without change of standard form for submitting facilities and administrative rate proposals by educational institutions. These forms are required by OMB Circular A–21, ''Cost Principles for Educational Institutions.''

DATES: Comments must be submitted on or before September 13, 2004. Late comments will be considered to the extent practicable.

ADDRESSES: Comments should be mailed to Gilbert Tran, Office of Federal Financial Management, Office of Management and Budget, 725 17th Street, NW., Room 6025, Washington, DC 20503. Electronic mail (e-mail) comments may be submitted to *Hai_M._Tran@omb.eop.gov.* Please include the full body of the comments in the text of the message and not as an attachment. Please include the name, title, organization, postal address, and e-mail address in the text of the message. Due to problems receiving postal mail by OMB, we encourage the use of electronic submission. Mailed comments may not be received in a timely manner.

FOR FURTHER INFORMATION CONTACT: Gilbert Tran, Office of Federal Financial Management, Office of Management and Budget, (202) 395–3993. The form can also be downloaded from the OMB Grants Management home page (*http://www.whitehouse.gov/omb/grants*).

SUPPLEMENTARY INFORMATION:

OMB Control No.: 0348–0058.

Title: A–21 Facilities and Administrative Proposal.

Form No.: NA.

Type of Review: Extension of a currently approved collection.

Respondents: Large universities.

Number of Responses: 300.

Estimated Time Per Response: 4 hours.

Needs and Uses: This form provides a standardized format for the submission of facilities and administrative (F&A) rate proposals that would assist educational institutions in completing their F&A rate proposals more efficiently, and help the cognizant agency review each proposal on a more consistent basis. It will also facilitate the Federal government's effort to collect better information regarding educational institutions' F&A costs that could be useful in explaining variations in F&A rates among institutions. The form can also be downloaded from the OMB Grants Management home page (*http://www.whitehouse.gov/omb/grants*) or

calling or writing Gilbert Tran at the address listed above.

Linda M. Springer,

Controller.

[FR Doc. 04–15733 Filed 7–14–04; 8:45 am]

BILLING CODE 3110–01–P

OVERSEAS PRIVATE INVESTMENT CORPORATION

Submission for OMB Review; Comments Request

AGENCY: Overseas Private Investment Corporation (OPIC).

ACTION: Request for comments.

SUMMARY: Under the provisions of the Paperwork Reduction Act (44 U.S.C. Chapter 35), agencies are required to publish a notice in the **Federal Register** notifying the public that the Agency has prepared an information collection request for OMB review and approval and has requested public review and comment on the submission. Comments are being solicited on the need for the information; the accuracy of the Agency's burden estimate; the quality, practical utility and clarity of the information to be collected; and on ways to minimize the reporting burden, including automated collection techniques and uses of other forms of technology. The proposed form, OMB control number 3420–0015, under review is summarized below.

DATES: Comments must be received within 60-calendar days of publication of this Notice.

ADDRESSES: Copies of the subject form and the request for review prepared for submission to OMB may be obtained from the Agency Submitting Officer. Comments on the form should be submitted to the Agency Submitting Officer.

FOR FURTHER INFORMATION CONTACT: *OPIC Agency Submitting Officer:* Bruce I. Campbell, Records Management Officer, Overseas Private Investment Corporation, 1100 New York Avenue, NW., Washington, DC 20527; (202) 336–8563.

Summary of Form Under Review

Type of Request: Form Renewal.

Title: Application for Financing.

Form Number: OPIC–115.

Frequency of Use: One per investor, per project.

Type of Respondents: Business or other institutions (except farms); individuals.

Description of Affected Public: U.S. companies or citizens investing overseas.

Reporting Hours: 4.0 hours per project.

Number of Responses: 300 per year.

Federal Cost: $22,053 per year.

Authority for Information Collection: Sections 231 and 234(b) and (c) of the Foreign Assistance Act of 1961, as amended.

Abstract (Needs and Uses): The OPIC 115 form is the principal document used by OPIC to determine the investor's and the project's eligibility for debt financing, assess the environmental impact and developmental effects of the project, measure the economic effects for the United States and the host country economy, and collect information for underwriting analysis.

Dated: July 9, 2004.

Eli Landy,

Senior Counsel, Administrative Affairs, Department of Legal Affairs.

[FR Doc. 04–16035 Filed 7–14–04; 8:45 am]

BILLING CODE 3210–01–M

PENSION BENEFIT GUARANTY CORPORATION

Required Interest Rate Assumption for Determining Variable-Rate Premium; Interest on Late Premium Payments; Interest on Underpayments and Overpayments of Single-Employer Plan Termination Liability and Multiemployer Withdrawal Liability; Interest Assumptions for Multiemployer Plan Valuations Following Mass Withdrawal

AGENCY: Pension Benefit Guaranty Corporation.

ACTION: Notice of interest rates and assumptions.

SUMMARY: This notice informs the public of the interest rates and assumptions to be used under certain Pension Benefit Guaranty Corporation regulations. These rates and assumptions are published elsewhere (or can be derived from rates published elsewhere), but are collected and published in this notice for the convenience of the public. Interest rates are also published on the PBGC's Web site (*http://www.pbgc.gov*).

DATES: The required interest rate for determining the variable-rate premium under part 4006 applies to premium payment years beginning in July 2004. The interest assumptions for performing multiemployer plan valuations following mass withdrawal under part 4281 apply to valuation dates occurring in August 2004. The interest rates for late premium payments under part 4007 and for underpayments and overpayments of single-employer plan termination liability under part 4062 and multiemployer withdrawal liability under part 4219 apply to interest accruing during the third quarter (July through September) of 2004.

FOR FURTHER INFORMATION CONTACT: Harold J. Ashner, Assistant General Counsel, Office of the General Counsel, Pension Benefit Guaranty Corporation, 1200 K Street, NW., Washington, DC 20005, 202–326–4024. (TTY/TDD users may call the Federal relay service toll-free at 1–800–877–8339 and ask to be connected to 202–326–4024.)

SUPPLEMENTARY INFORMATION:

Variable-Rate Premiums

Section 4006(a)(3)(E)(iii)(II) of the Employee Retirement Income Security Act of 1974 (ERISA) and § 4006.4(b)(1) of the PBGC's regulation on Premium Rates (29 CFR part 4006) prescribe use of an assumed interest rate (the ''required interest rate'') in determining a single-employer plan's variable-rate premium. Pursuant to the Pension Funding Equity Act of 2004, for premium payment years beginning in 2004 or 2005, the required interest rate is the ''applicable percentage'' (currently 85 percent) of the annual rate of interest determined by the Secretary of the Treasury on amounts invested conservatively in long-term investment grade corporate bonds for the month preceding the beginning of the plan year for which premiums are being paid. Thus, the required interest rate to be used in determining variable-rate premiums for premium payment years beginning in July 2004 is 5.25 percent (*i.e.*, 85 percent of the 6.18 percent composite corporate bond rate for June 2004 as determined by the Treasury).

The following table lists the required interest rates to be used in determining variable-rate premiums for premium payment years beginning between August 2003 and July 2004. Note that the required interest rates for premium payment years beginning in August through December 2003 were determined under the Job Creation and Worker Assistance Act of 2002, and that the required interest rates for premium payment years beginning in January through July 2004 were determined under the Pension Funding Equity Act of 2004.

For premium payment years beginning in	The required interest rate is
August 2003*	4.93
September 2003*	5.31
October 2003*	5.14
November 2003*	5.16
December 2003*	5.12

For premium payment years beginning in	The required interest rate is
January 2004**	4.94
February 2004**	4.83
March 2004**	4.79
April 2004**	4.62
May 2004**	4.98
June 2004**	5.26
July 2004**	5.25

*The required interest rates for premium payment years beginning in August through December 2003 were determined under the Job Creation and Worker Assistance Act of 2002.

**The required interest rates for premium payment years beginning in January through July 2004 were determined under the Pension Funding Equity Act of 2004.

Late Premium Payments; Underpayments and Overpayments of Single-Employer Plan Termination Liability

Section 4007(b) of ERISA and § 4007.7(a) of the PBGC's regulation on Payment of Premiums (29 CFR part 4007) require the payment of interest on late premium payments at the rate established under section 6601 of the Internal Revenue Code. Similarly, § 4062.7 of the PBGC's regulation on Liability for Termination of Single-Employer Plans (29 CFR part 4062) requires that interest be charged or credited at the section 6601 rate on underpayments and overpayments of employer liability under section 4062 of ERISA. The section 6601 rate is established periodically (currently quarterly) by the Internal Revenue Service. The rate applicable to the third quarter (July through September) of 2004, as announced by the IRS, is 4 percent.

The following table lists the late payment interest rates for premiums and employer liability for the specified time periods:

From—	Through—	Interest rate (percent)
4/1/98	12/31/98	8
1/1/99	3/31/99	7
4/1/99	3/31/00	8
4/1/00	3/31/01	9
4/1/01	6/30/01	8
7/1/01	12/31/01	7
1/1/02	12/31/02	6
1/1/03	9/30/03	5
10/1/03	3/31/04	4
4/1/04	6/30/04	5
7/1/04	9/30/04	4

Underpayments and Overpayments of Multiemployer Withdrawal Liability

Section 4219.32(b) of the PBGC's regulation on Notice, Collection, and Redetermination of Withdrawal Liability (29 CFR part 4219) specifies the rate at which a multiemployer plan is to charge or credit interest on underpayments and overpayments of withdrawal liability under section 4219 of ERISA unless an applicable plan provision provides otherwise. For interest accruing during any calendar quarter, the specified rate is the average quoted prime rate on short-term commercial loans for the fifteenth day (or the next business day if the fifteenth day is not a business day) of the month preceding the beginning of the quarter, as reported by the Board of Governors of the Federal Reserve System in Statistical Release H.15 (''Selected Interest Rates''). The rate for the third quarter (July through September) of 2004 (*i.e.,* the rate reported for June 15, 2004) is 4.00 percent.

The following table lists the withdrawal liability underpayment and overpayment interest rates for the specified time periods:

From	Through	Interest rate (percent)
7/1/97	12/31/98	8.50
1/1/99	9/30/99	7.75
10/1/99	12/31/99	8.25
1/1/00	3/31/00	8.50
4/1/00	6/30/00	8.75
7/1/00	3/31/01	9.50
4/1/01	6/30/01	8.50
7/1/01	9/30/01	7.00
10/1/01	12/31/01	6.50
1/1/02	12/31/02	4.75
1/1/03	9/30/03	4.25
10/1/03	9/30/04	4.00

Multiemployer Plan Valuations Following Mass Withdrawal

The PBGC's regulation on Duties of Plan Sponsor Following Mass Withdrawal (29 CFR part 4281) prescribes the use of interest assumptions under the PBGC's regulation on Allocation of Assets in Single-Employer Plans (29 CFR part 4044). The interest assumptions applicable to valuation dates in August 2004 under part 4044 are contained in an amendment to part 4044 published elsewhere in today's **Federal Register**. Tables showing the assumptions applicable to prior periods are codified in appendix B to 29 CFR part 4044.

Issued in Washington, DC, on this 9th day of July, 2004.

Joseph H. Grant,

Deputy Executive Director and Chief Operating Officer, Pension Benefit Guaranty Corporation.

[FR Doc. 04–16003 Filed 7–14–04; 8:45 am]

BILLING CODE 7708–01–P

SECURITIES AND EXCHANGE COMMISSION

Sunshine Act Meeting

Notice is hereby given, pursuant to the provisions of the Government in the Sunshine Act, Pub. L. 94–409, that the Securities and Exchange Commission will hold the following meetings during the week of July 19, 2004:

Closed Meetings will be held on Tuesday, July 20, 2004 at 2 p.m., and Thursday, July 22, 2004 at 2:00 p.m.

Commissioners, Counsel to the Commissioners, the Secretary to the Commission, and recording secretaries will attend the Closed Meetings. Certain staff members who have an interest in the matter may also be present.

The General Counsel of the Commission, or his designee, has certified that, in his opinion, one or more of the exemptions set forth in 5 U.S.C. 552b(c)(3), (5), (7), (8), (9)(B), and (10) and 17 CFR 200.402(a)(3), (5), (7), (8), 9(ii) and (10), permit consideration of the scheduled matters at the Closed Meetings.

Commissioner Atkins, as duty officer, voted to consider the item listed for the closed meetings in a closed session and determined that no earlier notice thereof was possible.

The subject matter of the Closed Meeting scheduled for Tuesday, July 20, 2004 will be:

Formal orders of investigations;

Institution and settlement of an injunctive action;

Institution of an administrative proceeding of an enforcement nature; and

Regulatory matter regarding a financial institution.

The subject matter of the Closed Meeting scheduled for Tuesday, July 22, 2004 will be:

Formal orders of investigations;

Institution and settlement of injunctive actions; and

Institution and settlement of an administrative proceeding of an enforcement nature.

At times, changes in Commission priorities require alterations in the scheduling of meeting items. For further information and to ascertain what, if any, matters have been added, deleted or postponed, please contact:

The Office of the Secretary at (202) 942–7070.

Dated: July 13, 2004.

Jonathan G. Katz,

Secretary.

[FR Doc. 04–16263 Filed 7–13–04; 4:00 pm]

BILLING CODE 8010–01–P

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–49991; File No. SR–Amex–2004–49]

Self-Regulatory Organizations; American Stock Exchange LLC; Notice of Filing of Proposed Rule Change To Allow Amex Hearing Officers to Preside Over Default and Settlement Proceedings Without Empanelling Members of the Hearing Board To Serve on an Amex Disciplinary Panel

July 9, 2004.

Pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 (the ''Act''),[1] and Rule 19b–4 thereunder,[2] notice is hereby given that on June 28, 2004, the American Stock Exchange LLC (''Amex'' or ''Exchange'') filed with the Securities and Exchange Commission (''Commission'') the proposed rule change as described in Items I, II and III below, which Items have been prepared by the Exchange. The Commission is publishing this notice to solicit comments on the proposed rule change from interested persons.

I. Self-Regulatory Organization's Statement of the Terms of Substance of the Proposed Rule Change

The Amex proposes to amend Section 1(b) of Article V of the Amex Constitution, and Rule 2(b) of the Amex Rules of Procedure in Disciplinary Matters, to allow Amex hearing officers to preside over default and settlement proceedings without empanelling members of the Hearing Board to serve on an Amex Disciplinary Panel. The text of the proposed rule change is available at the Amex and at the Commission.

II. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

In its filing with the Commission, the Exchange included statements concerning the purpose of and basis for its proposal and discussed any comments it received regarding the proposal. The text of these statements may be examined at the places specified in Item IV below. The Exchange has prepared summaries, set forth in Sections A, B and C below, of the most significant aspects of such statements.

[1] 15 U.S.C. 78s(b)(1).

[2] 17 CFR 240.19b–4.

A. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

1. Purpose

The Exchange proposes to amend Article V, Section 1(b) of the Amex Constitution, and Rule 2(b) of the Amex Rules of Procedure in Disciplinary Matters, to allow Amex hearing officers to preside over default and settlement proceedings without empanelling members of the Hearing Board to serve on an Amex Disciplinary Panel (''Disciplinary Panel'' or ''Panel''). Article V, Section 1(b) of the Amex Constitution currently requires disciplinary proceedings to be held before a Panel, which consists of a hearing officer who serves as Panel Chairman, and two to four persons selected from the Hearing Board.[3] Consistent with the Amex Constitution, Rule 2(b) of the Rules of Procedure in Disciplinary Matters states that the Panel Chairman must review the Statement of Charges initiating a disciplinary proceeding or the Stipulation of Facts and Consent to Penalty (''Stipulation''), and select members of the Hearing Board to serve on a Disciplinary Panel. The Amex believes that the requirement to appoint panelists from the Hearing Board, which includes vetting each panelist's background for experience and conflicts of interest, can cause unnecessary delays in resolving default and settlement proceedings. There are no exceptions to the Panel selection process in default and settlement hearings, and the Exchange believes that the uncontested nature of such proceedings warrants a more efficient and cost-effective approach.[4]

A default hearing arises when a member, member organization or an employee thereof fails to respond to a Statement of Charges. In accordance with Article V, Section 1 of the Amex Constitution, failure to respond to a Statement of Charges results in an admission of the charge or charges.

A settlement hearing arises when the Exchange and a respondent successfully negotiate a resolution to an Enforcement investigation, which includes sanctions. The settlement may be negotiated before the issuance of a Statement of Charges, or in connection with a Statement of Charges before a hearing on the merits has begun. The result of a settlement negotiation is memorialized in a Stipulation.[5] When presented with a Stipulation for review, a Disciplinary Panel has three alternatives: (1) Accept the Stipulation; (2) reject the Stipulation based on a belief that the penalty agreed upon by the parties is too low or that the proposed settlement is otherwise inappropriate; or (3) if the panel finds mitigating factors, lower the penalty in the Stipulation.[6] If the parties cannot negotiate a Stipulation that is acceptable to the Disciplinary Panel, the matter proceeds to a contested hearing.

Given the limited number of alternatives that can be taken by the Disciplinary Panel in default and settlement proceedings and, as described below, the use of sanction guidelines, precedent memoranda and the procedures for review by the Amex Adjudicatory Council (''AAC'')[7] and the Amex Board, the Exchange believes that it is appropriate for the hearing officer to preside over such proceedings without convening a full disciplinary panel.

All disciplinary actions are subject to Amex Sanction Guidelines. When a particular violation is not addressed by Amex Sanction Guidelines, it is the policy of the Exchange to use NASD Sanction Guidelines, to the extent applicable and absent sufficient reason to depart from those guidelines. In addition, for each disciplinary action, the Exchange will prepare a ''precedent memorandum'' highlighting factually similar cases and the penalty or penalties associated therewith.[8] The Amex believes that the use of sanction guidelines and precedent memoranda ensures the fair and consistent assessment of penalties.

Pursuant to Article V, Section 1(c) of the Amex Constitution and Amex Rule 345(f), any determination or penalty imposed by a Disciplinary Panel may be appealed to, or called for review by, the AAC. The AAC has authority to affirm, modify or remand any determination or

[3] Exchange Officials and other persons are appointed to the Hearing Board in accordance with Article V, Section 1(b)(2) of the Amex Constitution and Rule 1 of the Amex Rules of Procedure in Disciplinary Matters. Members of the Hearing Board are not compensated by the Exchange, but rather volunteer their time to adjudicate Amex disciplinary matters.

[4] The Exchange does not propose to alter the panel selection process in contested hearings.

[5] In settlement proceedings, the respondent neither admits nor denies the allegations set forth in the Statement of Charges or the Stipulation.

[6] See Article V, Section 2 of the Amex Constitution and Amex Rule 345(k).

[7] The AAC, which is comprised of Floor and Public Governors, has the authority to act on behalf of the Board with respect to any appeal or review of a disciplinary proceeding or any review of a Stipulation. *See* Article II, Section 6(a) of the Amex Constitution. Upon the request of any four of its members, the Board may review any determination of the AAC. *See* Article V, Section 1(d) of the Amex Constitution and Amex Rule 345(g).

[8] Precedent memoranda are provided to both respondents and members of the Disciplinary Panel.

penalty imposed by a Disciplinary Panel. Similarly, pursuant to Article V, Section 2 of the Amex Constitution and Amex Rule 345(k), any Disciplinary Panel determination in connection with a Stipulation may be called for review by the AAC. If called for review, the AAC has authority to affirm or lower the penalty associated with the Stipulation or to reject the Stipulation.

In view of the foregoing, the Exchange believes that a three to five member Disciplinary Panel is not necessary in default and settlement hearings, as such proceedings are uncontested. In default proceedings, the facts are undisputed, as the respondent is deemed to have admitted each allegation in the Statement of Charges. In settlement proceedings, the Exchange and the respondent have negotiated and agreed to the terms of a settlement as evidenced by the Stipulation. With respect to the appropriateness of penalties assessed in default and settlement proceedings, the hearing officer will be informed by sanction guidelines and precedent memoranda. Moreover, in light of the AAC and the Board's authority to review the outcome of any disciplinary action, the Amex believes sufficient safeguards exist to ensure the fairness of the Exchange's disciplinary process. As an added safeguard, this proposed rule change preserves a hearing officer's authority to select members of the Hearing Board to serve on a Disciplinary Panel in default and settlement proceedings when the hearing officer believes that their judgment or expertise is required.

2. Statutory Basis

The Exchange believes that the proposed rule change is consistent with Section 6(b) of the Act [9] in general, and furthers the objectives of Section 6(b)(7) of the Act [10] in particular in that it is designed to provide a fair and efficient procedure for the disciplining of members and persons associated with members. Moreover, the Amex believes the proposed rule change furthers the objectives of Section 6(b)(5) of the Act [11] in that it is designed to prevent fraudulent and manipulative acts and practices, to promote just and equitable principles of trade, to foster cooperation and coordination with persons engaged in facilitating transactions in securities, to remove impediments to and perfect the mechanism of a free and open market and a national market system, to protect investors and the public interest, and is not designed to permit unfair discrimination between customers, issuers, brokers, or dealers.

B. Self-Regulatory Organization's Statement on Burden on Competition

The Exchange does not believe that the proposed rule change will impose any burden on competition.

C. Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received From Members, Participants, or Others

No written comments were solicited or received with respect to the proposed rule change.

III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action

Within 35 days of the date of publication of this notice in the **Federal Register** or within such longer period (i) as the Commission may designate up to 90 days of such date if it finds such longer period to be appropriate and publishes its reasons for so finding or (ii) as to which the Amex consents, the Commission will:

(A) By order approve the proposed rule change, or

(B) Institute proceedings to determine whether the proposed rule change should be disapproved.

IV. Solicitation of Comments

Interested persons are invited to submit written data, views, and arguments concerning the foregoing, including whether the proposed rule change is consistent with the Act. Comments may be submitted by any of the following methods:

Electronic Comments

- Use the Commission's Internet comment form (*http://www.sec.gov/rules/sro.shtml*); or
- Send an e-mail to *rule-comments@sec.gov*. Please include File Number SR–Amex–2004–49 on the subject line.

Paper Comments

- Send paper comments in triplicate to Jonathan G. Katz, Secretary, Securities and Exchange Commission, 450 Fifth Street, NW., Washington, DC 20549–0609.

All submissions should refer to File Number SR–Amex–2004–49. This file number should be included on the subject line if e-mail is used. To help the Commission process and review your comments more efficiently, please use only one method. The Commission will post all comments on the Commission's Internet Web site (*http://www.sec.gov/rules/sro.shtml*). Copies of the submission, all subsequent amendments, all written statements with respect to the proposed rule change that are filed with the Commission, and all written communications relating to the proposed rule change between the Commission and any person, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. 552, will be available for inspection and copying in the Commission's Public Reference Section, 450 Fifth Street, NW., Washington, DC 20549. Copies of such filing also will be available for inspection and copying at the principal office of the Amex. All comments received will be posted without change; the Commission does not edit personal identifying information from submissions. You should submit only information that you wish to make available publicly. All submissions should refer to File Number SR–Amex–2004–49 and should be submitted on or before August 5, 2004.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.[12]

Margaret H. McFarland,

Deputy Secretary.

[FR Doc. 04–16046 Filed 7–14–04; 8:45 am]

BILLING CODE 8010–01–P

[9] 15 U.S.C. 78(f)(b).

[10] 15 U.S.C. 78(f)(b)(7).

[11] 15 U.S.C. 78f(b)(5).

[12] 17 CFR 200.30–3(a)(12).

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–49990; File No. SR–CBOE–2003–39]

Self-Regulatory Organizations; Notice of Filing of Proposed Rule Change and Amendment Nos. 1, 2, and 3 Thereto by the Chicago Board Options Exchange, Inc. Relating to Quote Sizes

July 8, 2004.

Pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 (''Act'') [1] and Rule 19b–4 [2] thereunder, notice is hereby given that on September 12, 2003, the Chicago Board Options Exchange, Inc. (''CBOE'' or ''Exchange'') filed with the Securities and Exchange Commission (''Commission'') the proposed rule change as described in Items I, II, and III below, which Items have been prepared by the Exchange. On October 29, 2003, the CBOE filed Amendment No. 1 to the proposed rule change.[3] On

[1] 15 U.S.C. 78s(b)(1).

[2] 17 CFR 240.19b–4.

[3] *See* letter from Steve Youhn, Senior Attorney, CBOE, to Deborah Flynn, Assistant Director,

Continued

June 10, 2004, the CBOE filed Amendment No. 2 to the proposed rule change.[4] On June 28, 2004, the CBOE filed Amendment No. 3 to the proposed rule change.[5] The Commission is publishing this notice to solicit comments on the proposed rule change, as amended, from interested persons.

I. Self-Regulatory Organization's Statement of the Terms of Substance of the Proposed Rule Change

The Exchange proposes to amend its rules relating to options market maker quote size requirements. Below is the text of the proposed rule change. Proposed new language is in italics; proposed deletions are in [brackets].

* * * * *

Rule 8.7 Obligations of Market Makers

(a)–(c) No change.

(d) Market Making Obligations Applicable in Hybrid Classes.

* * * * *

(i) Market Maker Trades Less Than 20% Contract Volume Electronically.

* * * * *

(A) No Change

(B) Continuous Electronic Quoting Obligation: The Market-Maker will not be obligated to quote electronically in any designated percentage of series within that class. If a market maker quotes electronically, its undecremented quote must be for at least ten contracts[.] *(''10-up''), unless the underlying primary market disseminates a 100-share quote, in which case the Market-Maker's undecremented quote may be for as low as 1-contract (''1-up''). The ability to quote 1-up when the underlying primary quotes 100 shares is expressly conditioned on the process being automated (i.e., a Market-Maker may not manually adjust his quotes to reflect 1-up sizes). Quotes must automatically return to at least 10-up when the underlying primary market no longer disseminates a 100-share quote. Market-Makers that have not automated this process may not avail themselves of the relief provided herein. The ability to quote 1-up shall operate on a pilot basis and shall terminate (insert date one year from date of approval).*

(C)–(D) No Change.

(ii) Market Maker Trades More Than 20% Contract Volume Electronically.

* * * * *

(A) No Change.

(B) Continuous Quoting Obligation: A market maker will be required to maintain continuous two-sided quotes for at least ten contracts (undecremented size) in a designated percentage of series within the class, in accordance with the schedule below[:]. *If the underlying primary market disseminates a 100-share quote, a Market-Maker may quote 1-up, however, this ability is expressly conditioned on the process being automated (i.e., a Market-Maker may not manually adjust his quotes to reflect 1-up sizes). Quotes must automatically return to at least 10-up when the underlying primary market no longer disseminates a 100-share quote. Market-Makers that have not automated this process may not avail themselves of the relief provided herein. The ability to quote 1-up shall operate on a pilot basis and shall terminate (insert date one year from date of approval).*

* * * * *

(C) No Change.

Interpretations and Policies * * *

.01–.04 No change.

.05 Unless an options class is exempted by the appropriate Market Performance Committee, under normal market conditions a Market-Maker's bid or offer for a series of options of unspecified size is for five contracts, except that a Market-Maker may be compelled to buy or sell a specific number of contracts at the disseminated bid or offer pursuant to his obligations under Rule 8.51. [In classes in which the CBOE Hybrid system is operational such that each market participant is deemed the responsible broker-dealer for its quotations, a Market-Maker's initial bid or offer must be accompanied by a size (for at least ten (10) contracts), indicating the number of contracts for which the Market-Maker will buy (sell) at his price.]

.06–.13 No change.

* * * * *

II. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

In its filing with the Commission, the Exchange included statements concerning the purpose of and basis for the proposed rule change and discussed any comments it received on the proposed rule change. The text of these statements may be examined at the places specified in Item IV below. The Exchange has prepared summaries, set forth in Sections A, B, and C below, of the most significant aspects of such statements.

A. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

1. Purpose

CBOE Rules 8.7(d)(i)(B) and (d)(ii)(B), which only apply to classes trading on the Hybrid Trading System, impose a ten contract (''10-up'') minimum size requirement for market makers when such market makers quote electronically. Similarly, Interpretation .05 to CBOE Rule 8.7 imposes a 10-up size requirement for a market maker's initial bid or offer. Generally, the Exchange believes that this ten contract quoting requirement imposes a reasonable obligation on market makers, who, in turn for satisfying this and other obligations, are entitled to receive maker maker margin treatment. Nevertheless, the Exchange believes that there are instances in which requiring market makers to quote 10-up imposes a heightened and inappropriate level of risk upon them. Accordingly, in the Exchange's view, the purpose of this filing is to adopt a limited exception to the 10-up minimum quoting requirement in one such specific instance on a one-year pilot basis.

Under this proposed exception, market makers on the Hybrid Trading System would be able to quote a size less than ten contracts whenever the underlying primary market for the option (or ETF option) disseminates a 1-up market (*i.e.*, a market that reflects a quotation for 100 shares of the underlying security). The Exchange believes that, when the underlying market disseminates a 1-up quote, it substantially restricts the amount of liquidity available in that security to 100 shares on that particular side of the market. According to the Exchange, there is no restriction on the ability of a stock specialist in the underlying market to quote a 1-up market. The Exchange notes that options exchanges are derivative markets. In this regard, the Exchange believes that, with a minimum quote size requirement of ten contracts, when the underlying stock market is 1-up, an options exchange provides more than ten times the liquidity than does the underlying stock market. The Exchange also believes that, because an options exchange may list twenty or more options series for an underlying stock, options market makers end up providing exponentially more liquidity than is available in the

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Division of Market Regulation (''Division''), Commission, dated October 28, 2003 (''Amendment No. 1'').

[4] *See* letter from Steve Youhn, Senior Attorney, CBOE, to Nancy Sanow, Assistant Director, Division, Commission, dated June 9, 2003 (''Amendment No. 2''). In Amendment No. 2, CBOE replaced the original rule filing in its entirety.

[5] *See* letter from Steve Youhn, Senior Attorney, CBOE, to Nancy Sanow, Assistant Director, Division, Commission, dated June 25, 2003 (''Amendment No. 3''). In Amendment No. 3, CBOE made technical corrections to the proposed rule text.

underlying market.[6] Additionally, according to the Exchange, market makers must hedge their transactions by buying and/or selling stock, and when the underlying stock exchange posts a 1-up market, it restricts the market maker's ability to hedge, which does nothing but increase such market maker's financial exposure.[7] For these reasons, the Exchange believes that market makers in this instance should have the ability to lower their quote sizes to one contract if they choose, thereby matching the amount of liquidity provided by the underlying.

The Exchange further proposes that the ability to quote 1-up when the underlying primary is 1-up is expressly conditioned on the process being automated (*i.e.*, a market maker may not manually adjust his quotes to reflect 1-up sizes). As part of this automation, quotes must automatically return to at least 10-up when the underlying primary market no longer disseminates a 1-up quote. Market makers that have not automated this process may not avail themselves of the relief provided herein.

The Exchange also proposes to delete the language that imposes a 10-up size requirement for a market maker's initial bid or offer in Interpretation .05 to CBOE Rule 8.7, because that language is duplicative of what is already contained in Rule 8.7(d).

The Exchange proposes that this exception operate on a one-year pilot basis. Prior to being able to participate in this pilot program, market makers or their vendors that provide their handheld quoting devices would be required to demonstrate to the Exchange that they have automated the process discussed above. Upon completion of the pilot period, the Exchange represents that it will provide to the Commission a report detailing the effectiveness of the program, along with a request either to eliminate or make permanent the pilot program.

Finally, the Exchange believes that the proposal is consistent with CBOE Rule 8.51, which allows the appropriate Floor Procedure Committee to establish separate firm quote requirements for each series of option, which shall be for at least one contract for non-broker-dealer orders and broker-dealer orders. The Exchange believes that nothing in this proposal would affect a market maker's obligation to honor its firm quote requirements imposed by CBOE Rule 8.51. Accordingly, if a market maker disseminates a 1-up market, its firm quote obligation would be one contract.[8]

2. Statutory Basis

The Exchange believes that its proposal is consistent with Section 6(b) of the Act[9] in general, and furthers the objectives of Section 6(b)(5) of the Act[10] in particular, in that it is designed to promote just and equitable principles of trade, to prevent fraudulent and manipulative acts and, in general, to protect investors and the public interest. The Exchange believes that the proposal provides for a very limited exception to the general requirement that market maker's quotes be for a minimum ten contracts. The Exchange believes that this exception, which in the Exchange's view, is narrowly-tailored and must be automated, will provide a measure of protection to marker makers when the underlying primary market disseminates 1-up markets. Accordingly, the Exchange believes the proposal serves to enhance the incentives of market makers to quote competitively and reduces the disincentives to quote competitively.

B. Self-Regulatory Organization's Statement on Burden on Competition

The Exchange does not believe that the proposed rule change will impose any burden on competition that is not necessary or appropriate in furtherance of the purposes of the Act.

C. Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received From Members, Participants or Others

The Exchange has neither solicited nor received written comments on the proposed rule change.

III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action

Within 35 days of the date of publication of this notice in the **Federal Register** or within such longer period (i) as the Commission may designate up to 90 days of such date if it finds such longer period to be appropriate and publishes its reasons for so finding or (ii) as to which the self-regulatory organization consents, the Commission will:

A. By order approve the proposed rule change, or

B. Institute proceedings to determine whether the proposed rule change should be disapproved.

IV. Solicitation of Comments

Interested persons are invited to submit written data, views, and arguments concerning the foregoing, including whether the proposed rule change, as amended, is consistent with the Act. Comments may be submitted by any of the following methods:

Electronic Comments

- Use the Commission's Internet comment form (*http://www.sec.gov/rules/sro.shtml*); or
- Send an e-mail to *rule-comments@sec.gov.* Please include File Number SR–CBOE–2003–39 on the subject line.

Paper Comments

- Send paper comments in triplicate to Jonathan G. Katz, Secretary, Securities and Exchange Commission, 450 Fifth Street, NW., Washington, DC 20549–0609.

All submissions should refer to File Number SR–CBOE–2003–39. This file number should be included on the subject line if e-mail is used. To help the Commission process and review your comments more efficiently, please use only one method. The Commission will post all comments on the Commission's Internet Web site (*http://www.sec.gov/rules/sro.shtml*). Copies of the submission, all subsequent amendments, all written statements with respect to the proposed rule change that are filed with the Commission, and all written communications relating to the proposed rule change between the Commission and any person, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. 552, will be available for inspection and copying in the Commission's Public Reference Section, 450 Fifth Street, NW., Washington, DC 20549–0609. Copies of such filing also will be available for inspection and copying at the principal office of the CBOE. All comments received will be posted without change; the Commission does not edit personal identifying information from submissions. You should submit only information that you wish to make available publicly.

[6] For example, if a maker maker posts 10-up markets in twenty series, such market maker would be providing liquidity equivalent to 20,000 shares, which would dwarf the underlying market's size commitment of 100 shares.

[7] NYSE Information memo 94–32 (August 9, 1994) indicates that 1-up markets on the NYSE can last for as long as *five* minutes. The Exchange believes that, during this five-minute period, options market makers without the ability to post a 1-up market themselves will become the *de facto* liquidity providers for that security and will be unable to hedge their transactions.

[8] Telephone conversation between Steve Youhn, Senior Attorney, CBOE and Hong-Anh Tran, Special Counsel, Division, Commission, on July 7, 2004.

[9] 15 U.S.C. 78f(b).

[10] 15 U.S.C. 78f(b)(5).

All submissions should refer to File Number SR–CBOE–2003–39 and should be submitted on or before August 5, 2004.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.[11]

Margaret H. McFarland,

Deputy Secretary.

[FR Doc. 04–16049 Filed 7–14–04; 8:45 am]

BILLING CODE 8010–01–P

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–49995; File No. SR–CBOE–2004–28]

Self-Regulatory Organizations; Notice of Filing and Order Granting Accelerated Approval of Proposed Rule Change and Amendment Nos. 1 and 2 thereto by the Chicago Board Options Exchange, Incorporated, Relating to Enhanced Corporate Governance Requirements for Listed Companies

July 9, 2004.

Pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 (''Act'')[1] and Rule 19b–4 thereunder,[2] notice is hereby given that on May 6, 2004, the Chicago Board Options Exchange, Incorporated (''CBOE'' or ''Exchange'') filed with the Securities and Exchange Commission (''Commission'' or ''SEC'') the proposed rule change as described in Items I and II below, which Items have been prepared by the CBOE. On June 24, 2004, and July 9, 2004, the CBOE filed Amendment Nos. 1[3] and 2,[4] respectively, to the proposed rule change. The Commission is publishing this notice to solicit comments on the proposed rule change, as amended, from interested persons and is approving the proposal on an accelerated basis.

[11] 17 CFR 200.30–3(a)(12).

[1] 15 U.S.C. 78s(b)(1).

[2] 17 CFR 240.19b–4.

[3] *See* letter from David Doherty, Attorney, Legal Division, CBOE, to Ira Brandriss, Assistant Director, Division of Market Regulation (''Division''), Commission, dated June 23, 2004 (''Amendment No. 1''). The changes proposed in Amendment No. 1 have been incorporated into the proposal as set forth below.

[4] *See* letter from David Doherty, Attorney, Legal Division, CBOE, to Cyndi N. Rodriguez, Special Counsel, Division, Commission, dated July 9, 2004 (''Amendment No. 2''). Amendment No. 2 was a technical amendment and is not subject to notice and comment.

I. Self-Regulatory Organization's Statement of the Terms of Substance of the Proposed Rule Change

The CBOE proposes to amend its non-option listing standards to enhance the Exchange's corporate governance requirements applicable to listed companies. The text of the proposed rule filing, as amended, is set forth below. Additions are in italics; deletions are in brackets.

* * * * *

Chicago Board Options Exchange, Incorporated

Rules

* * * * *

Chapter XXXI

* * * * *

Approval of Securities for Original Listing

* * * * *

Rule 31.7 Securities of Foreign Issuers

(1) No change.

(2) The Exchange will consider the law, and *generally accepted* commercial and business practice of the [applicant's] *foreign issuer's* domicile in evaluating (A) the election and composition of its Board of Directors, to the extent such law, and *generally accepted* commercial and business practice with respect to the election and composition of its Board of Directors is consistent with the federal securities laws, including, but not limited to, *Exchange Act* Rule 10A–3 [of the Securities Exchange Act of 1934, as amended], (B) shareholder approval and quorum requirements for meetings, and (C) the issuance of quarterly earnings statements. *A foreign issuer that receives an exemption under this Rule 31.7(2) shall disclose in its annual reports filed with the Securities and Exchange Commission each requirement from which it is exempted and describe the practice of the foreign issuer's domicile, if any, followed by the issuer in lieu of such requirements. In addition, a foreign issuer making its initial public offering or first United States listing on the Exchange shall disclose any such exemptions in its registration statement.*

(3)–(5) No change.

** * * Interpretations and Policies*

01. A foreign private issuer listed on the Exchange may obtain exemptions from the corporate governance requirements described in Rule 31.7(2) that are consistent with the federal securities laws, including, but not limited to, Exchange Act Rule 10A–3, if such requirements would require the issuer to do anything contrary to the law, and generally accepted commercial and business practice of the foreign issuer's domicile. Issuers may request exemptions under this rule by submitting a letter from their home country counsel briefly describing the law, and generally accepted commercial and business practice of the home country. In the interest of transparency, the rule requires a foreign issuer to disclose the receipt of a corporate governance exemption in the issuer's annual filings with the Securities and Exchange Commission (typically Form 20–F or 40–F) and at the time of the issuer's original listing in the United States, if that listing is on the Exchange, in its registration statement (typically Form F–1, 20–F, or 40–F). The disclosure should include a brief statement of what alternative measures, if any, the issuer has taken in lieu of the corporate governance requirement(s) from which it was exempted. For example, the issuer might state that it complies with the relevant standards of its domicile.

* * * * *

Rule 31.9 Conflicts of Interest

Applicants will be asked to eliminate material conflicts of interest between officers, directors or principal shareholders and the applicant issuer prior to approval of the listing. Each issuer shall conduct an appropriate review of all related party transactions *for potential conflict of interest situations* on an ongoing basis and [shall use] *all such transactions must be approved by* the company's audit committee or [a comparable] *another independent* body *of the board of directors* [to review potential conflicts of interest situations where appropriate]. *For purposes of this rule, the term ''related party transaction'' shall refer to transactions required to be disclosed pursuant to SEC Regulation S–K, Item 404.*

* * * * *

Rule 31.10 *Corporate Governance* [Independent Directors]

[The Exchange requires an issuer to have at least two independent directors. For purposes of this section, ''independent director'' shall mean a person other than an officer or employee of the company or its subsidiaries or any other individual having a relationship which, in the opinion of the board of directors, would interfere with the exercise of independent judgment in carrying out the responsibilities of a director.]

(a) Composition of Board of Directors

(1) A majority of the board of directors of an issuer must be comprised of independent directors. The company must disclose in its annual proxy (or, if the issuer does not file a proxy, in its Form 10–K or 20–F) those directors that the board of directors has determined to be independent under Rule 31.10(h)(2). If an issuer fails to comply with this requirement due to one vacancy, or one director ceases to be independent due to circumstances beyond his or her reasonable control, the issuer shall regain compliance with the requirement by the earlier of its next annual shareholders meeting or one year from the occurrence of the event that caused the failure to comply with this requirement. An issuer relying on this provision shall provide notice to the Exchange immediately upon learning of the event or circumstance that caused the non-compliance.

(2) Independent directors must have regularly scheduled meetings at which only independent directors are present (''executive sessions'').

(b) Audit Committee

[The issuer shall maintain an audit committee (i) composed of such independent directors and (ii) that complies with the listing standards set forth in Rule 10A–3 of the Securities Exchange Act of 1934, as amended (''Exchange Act''). In addition to the listing standards provided in Exchange Act Rule 10A–3 that relate to audit committee responsibilities, audit committees for investment companies must establish procedures for the confidential, anonymous submission of concerns regarding questionable accounting or auditing matters by employees of the investment adviser, administrator, principal underwriter, or any other provider of accounting related services for the investment company, as well as employees of the investment company.]

(1) Audit Committee Composition

(A) Each issuer must have, and certify that it has and will continue to have, an audit committee of at least three members, each of whom must (i) be independent as defined in Rule 31.10(h)(2); (ii) meet the criteria for independence set forth in Exchange Act Rule 10A–3(b)(1) (subject to the exemptions provided in Rule 10A–3(c)); and (iii) be able to read and understand fundamental financial statements, including a company's balance sheet, income statement, and cash flow statement. Additionally, each issuer must certify that it has, and will continue to have, at least one member of the audit committee who is financially sophisticated, in that he or she has past employment experience in finance or accounting, requisite professional certification in accounting, or any other comparable experience or background which results in the individual's financial sophistication, including being or having been a chief executive officer, chief financial officer or other senior officer with financial oversight responsibilities.

(B) Notwithstanding Rule 31.10(b)(1)(A)(i), one director who: (i) is not independent as defined in Rule 31.10(h)(2); (ii) meets the criteria set forth in Section 10A(m)(3) of the Exchange Act and the rules thereunder; and (iii) is not a current officer or employee or a family member of such officer or employee, may be appointed to the audit committee, if the board, under exceptional and limited circumstances, determines that membership on the committee by the individual is required by the best interests of the company and its shareholders, and the board discloses, in the next annual proxy statement subsequent to such determination (or, if the issuer does not file a proxy, in its Form 10–K or 20–F), the nature of the relationship and the reasons for that determination. A member appointed under this exception may not serve longer than two years and may not chair the audit committee.

(2) Audit Committee Responsibilities and Authority

The audit committee must have the specific audit committee responsibilities and authority necessary to comply with Exchange Act Rules 10A–3(b)(2)–(5) (subject to the exemptions provided in Rule 10A–3(c)) concerning responsibilities relating to: (i) registered public accounting firms; (ii) complaints relating to accounting, internal accounting controls or auditing matters; (iii) authority to engage advisors; and (iv) funding as determined by the audit committee. Audit committees for investment companies must also establish procedures for the confidential, anonymous submission of concerns regarding questionable accounting or auditing matters by employees of the investment adviser, administrator, principal underwriter, or any other provider of accounting related services for the investment company, as well as employees of the investment company.

(3) Audit Committee Charter

Each issuer must certify that it has adopted a formal written audit committee charter and that the audit committee has reviewed and reassessed the adequacy of the formal written charter on an annual basis. The charter must specify:

(A) The scope of the audit committee's responsibilities, and how it carries out those responsibilities, including structure, processes, and membership requirements;

(B) The audit committee's responsibility for ensuring its receipt from the outside auditors of a formal written statement delineating all relationships between the auditor and the company, consistent with Independence Standards Board Standard 1, and the audit committee's responsibility for actively engaging in a dialogue with the auditor with respect to any disclosed relationships or services that may impact the objectivity and independence of the auditor and for taking, or recommending that the full board take, appropriate action to oversee the independence of the outside auditor;

(C) The committee's purpose of overseeing the accounting and financial reporting processes of the issuer and the audits of the financial statements of the issuer; and

(D) The specific audit committee responsibilities and authority set forth in Rule 31.10(b)(2).

(4) Cure Periods

(A) If a member of the audit committee ceases to be independent in accordance with the requirements of Exchange Act Rule 10A–3 *and Rule 31.10(b)(1)* for reasons outside the member's reasonable control, that person, with written notice to the Exchange, may remain an audit committee member of the listed issuer until the earlier of the next annual shareholders meeting of the listed issuer or one year from the occurrence of the event that caused the member to be no longer independent. *An issuer relying on this provision must provide notice to the Exchange immediately upon learning of the event or circumstance that caused the non-compliance.*

(B) If an issuer fails to comply with the audit committee composition requirement under Rule 31.10(b)(1)(A) due to one vacancy on the audit committee, and the cure period in Rule 31.10(b)(4)(A) is not otherwise being relied upon for another member, the issuer will have until the earlier of the next annual shareholders meeting or one year from the occurrence of the event that caused the failure to comply with this requirement. An issuer relying on the provision must provide notice to the Exchange immediately upon learning of the event or circumstance that caused the non-compliance.

(c) Compensation of Officers

(1) Compensation of the chief executive officer of the company must be determined, or recommended to the board for determination, either by:

(A) A majority of the independent directors; or

(B) A compensation committee comprised solely of independent directors.

The chief executive officer may not be present during voting or deliberations.

(2) Compensation of all other executive officers must be determined, or recommended to the board for determination, either by

(A) A majority of the independent directors; or

(B) A compensation committee comprised solely of independent directors.

(3) Notwithstanding paragraphs (c)(1)(B) and (c)(2)(B) above, if the compensation committee is comprised of at least three members, one director, who is not independent as defined in Rule 31.10(h)(2) and is not a current officer or employee or a family member of an officer or employee, may be appointed to the compensation committee if the board, under exceptional and limited circumstances, determines that such individual's membership on the committee is required by the best interests of the company and its shareholders, and the board discloses, in the proxy statement for the next annual meeting subsequent to such determination (or, if the issuer does not file a proxy, in its Form 10–K or 20–F), the nature of the relationship and the reasons for the determination. A member appointed under this exception may not serve longer than two years.

(d) Nomination of Directors

(1) Director nominees must either be selected, or recommended for the Board's selection, either by:

(A) A majority of the independent directors; or

(B) A nominations committee comprised solely of independent directors.

(2) Each issuer must certify that it has adopted a formal written charter or board resolution, as applicable, addressing the nominations process and such related matters as may be required under the federal securities laws.

(3) Notwithstanding subparagraph (d)(1)(B) above, if the nominations committee is comprised of at least three members, one director, who is not independent as defined in Rule 31.10(h)(2) and is not a current officer or employee or a family member of an officer or employee, may be appointed to the nominations committee if the board, under exceptional and limited circumstances, determines that such individual's membership on the committee is required by the best interests of the company and its shareholders, and the board discloses, in the proxy statement for the next annual meeting subsequent to such determination (or, if the issuer does not file a proxy, in its Form 10–K or 20–F), the nature of the relationship and the reasons for the determination. A member appointed under this exception may not serve longer than two years.

(4) Independent director oversight of director nominations shall not apply in cases where the right to nominate a director legally belongs to a third party. However, this does not relieve a company's obligation to comply with the committee composition requirements set forth in Rules 31.10(a)–(d).

(5) This Rule 31.10(d) is not applicable to a company if the company is subject to a binding obligation that requires a director nomination structure inconsistent with this rule and such obligation pre-dates the approval date of this rule.

(e) Each issuer shall adopt a code of conduct applicable to all directors, officers and employees, which shall be publicly available. A code of conduct satisfying this rule must comply with the definition of a ''code of ethics'' set out in Section 406(c) of the Sarbanes-Oxley Act of 2002 (the ''Sarbanes-Oxley Act'') and any regulations promulgated thereunder by the Securities and Exchange Commission. See 17 CFR 228.406 and 17 CFR 229.406. In addition, the code must provide for an enforcement mechanism. Domestic issuers shall disclose code of conduct waivers in a Form 8–K within five business days. Foreign private issuers shall disclose such waivers either in a Form 6–K or in the next Form 20–F.

(f) Exemptions

(1) Controlled Companies. A controlled company is exempt from the requirements of Rules 31.10(a), (c) and (d), except that a controlled company must comply with (i) the provision in subsection (a)(1) that requires a company to disclose in its annual proxy (or, if the issuer does not file a proxy, in its Form 10–K or 20–F) those directors that the board of directors has determined to be independent under Rule 31.10(h)(2) and (ii) the requirements of subsection (a)(2), which pertains to executive sessions of independent directors. For purposes of this Rule 31.10, a controlled company is a company of which more than 50% of the voting power is held by an individual, a group or another company. A controlled company relying upon this exemption must disclose in its annual meeting proxy statement (or, if the issuer does not file a proxy, in its Form 10–K or 20–F) that it is a controlled company and the basis for that determination.

(2) Registered Management Investment Companies. Management investment companies registered under the Investment Company Act of 1940 are exempt from the requirements of Rules 31.10(a), (c), (d) and (e). Such companies are otherwise required to comply with the remainder of Rule 31.10, except that open-end management investment companies are required to comply with Rule 31.10(b) only to the extent required by Exchange Act Rule 10A–3. In addition, open-end management investment companies must comply with the provision of Rule 31.10(b)(2) requiring audit committees of investment companies to establish procedures for the confidential, anonymous submission of concerns regarding questionable accounting or auditing matters by employees of the investment adviser, administrator, principal underwriter, or any other provider of accounting related services for the investment company, as well as employees of the investment company. This responsibility must be addressed in the audit committee charter.

(3) Asset-backed Issuers and Other Passive Issuers. The following are exempt from the requirements of Rules 31.10(a)–(e): (i) asset-backed issuers and (ii) issuers that are organized as trusts or other unincorporated associations that do not have a board of directors or persons acting in a similar capacity and whose activities are limited to passively owning or holding (as well as administering and distributing amounts in respect of) securities, rights, collateral or other assets on behalf of or for the benefit of the holders of the listed securities.

(4) Cooperatives. Cooperative entities, such as agricultural cooperatives, that are structured to comply with relevant state law and federal tax law and that do not have a publicly traded class of common stock are exempt from Rules 31.10(a), (c), (d) and (e). However, such entities must comply with all federal securities laws, including without limitation Exchange Act Section 10A(m) and Rule 10A–3 thereunder.

(5) Business Development Companies. Business development companies, which are a type of closed-end management investment company defined in Section 2(a)(48) of the Investment Company Act of 1940 that are not registered under that Act, are subject to all corporate governance requirements.

(g) Notifications. An issuer must provide the Exchange with prompt notification after an executive officer of the issuer becomes aware of any material noncompliance by the issuer with the requirements of Rule 31.10.

(h) Definitions

For purposes of Chapter XXXI, the following terms shall have the respective meanings:

(1) ''Family member'' means a person's spouse, parents, children and siblings, whether by blood, marriage or adoption, or anyone residing in such person's home.

(2) ''Independent director'' means a person other than an officer or employee of the company or its subsidiaries or any other individual having a relationship, which, in the opinion of the company's board of directors, would interfere with the exercise of independent judgment in carrying out the responsibilities of a director. The following persons shall not be considered independent:

(A) A director who is, or at any time during the past three years was, employed by the company or by any parent or subsidiary of the company;

(B) A director who accepted or who has a family member who accepted any payments from the company or any parent or subsidiary of the company in excess of $60,000 during the current or any of the past three fiscal years, other than the following:

(i) Compensation for board or board committee service;

(ii) Payments arising solely from investments in the company's securities;

(iii) Compensation paid to a family member who is a non-executive employee of the company or a parent or subsidiary of the company;

(iv) Benefits under a tax-qualified retirement plan, or non-discretionary compensation; or

(v) Loans permitted under Exchange Act Section 13(k).

Provided, however, that audit committee members are subject to additional, more stringent requirements under Exchange Act Rule 10A–3, which requirements are incorporated by reference in the Exchange rules pursuant to Rule 31.10(b).

(C) A director who is a family member of an individual who is, or at any time during the past three years was, employed by the company or by any parent or subsidiary of the company as an executive officer;

(D) A director who is, or has a family member who is, a partner in, or a controlling shareholder or an executive officer of, any organization to which the company made, or from which the company received, payments for property or services in the current or any of the past three fiscal years that exceed 5% of the recipient's consolidated gross revenues for that year, or $200,000, whichever is more, other than the following:

(i) Payments arising solely from investments in the company's securities; or

(ii) Payments under non-discretionary charitable contribution matching programs;

(E) A director of the listed company who is, or has a family member who is, employed as an executive officer of another entity where at any time during the past three years any of the executive officers of the listed company serve on the compensation committee of such other entity;

(F) A director who is, or has a family member who is, a current partner of the company's outside auditor, or was a partner or employee of the company's outside auditor who worked on the company's audit at any time during any of the past three years; or

(G) In the case of an investment company, in lieu of Rules 31.10(h)(2)(A)–(F), a director who is an ''interested person'' of the company as defined in Section 2(a)(19) of the Investment Company Act of 1940, other than in his or her capacity as a member of the board of directors or any board committee.

(i) Effective Dates/Transition

(1) In order to allow companies to make necessary adjustments in the course of their regular annual meeting schedule, and consistent with Exchange Act Rule 10A–3, Rules 31.10(a)–(d), (f) and (h) are effective as set forth below. During the transition period between July 9, 2004 and the applicable effective date, listed companies must comply with Rule 31.10 as in effect immediately prior to July 9, 2004 (see Rule 31.10.10).

- *July 31, 2005 for foreign private issuers and small business issuers (as defined in Exchange Act Rule 12b–2); and*
- *For all other listed issuers, by the earlier of (1) the listed issuer's first annual shareholders meeting after July 31, 2004; or (2) October 31, 2004.*

(2) In the case of an issuer with a staggered board, with the exception of the audit committee requirements, the issuer will have until its second annual meeting after January 15, 2004, but not later than December 31, 2005, to implement all of the new requirements, if the issuer would be required to change a director who would not normally stand for election at an earlier annual meeting. Such issuers must comply with the audit committee requirements pursuant to the implementation schedule bulleted above.

(3) Issuers that will be listed in conjunction with their initial public offering will be afforded exemptions from all board composition requirements set forth in Rule 31.10 consistent with the exemptions afforded in Exchange Act Rule 10A–3(b)(1)(iv)(A). That is, for each committee that the company adopts, the company will be required to have one independent member at the time of listing, a majority of independent members within 90 days of listing, and all independent members within one year. It should be noted, however, that investment companies are not afforded these exemptions in Exchange Rule 10A–3(b)(1)(iv)(A). Companies emerging from bankruptcy or which have ceased to be controlled companies will be required to meet the majority independent board requirement within one year. As provided under the proposal, issuers may choose not to adopt a compensation or nomination committee and could instead rely upon a majority of the independent directors to discharge responsibilities under Exchange rules. These issuers will be required to meet the majority independent board requirement within one year of listing.

(4) Companies transferring from other markets with substantially similar board composition requirements will be afforded the balance of any grace period afforded by the other market. Companies transferring from other listed markets that do not have a substantially similar board composition requirements will be afforded one year from the date of listing on the Exchange to comply with the Exchange's board composition requirements. This transition period is not intended to supplant any applicable requirements of Exchange Act Rule 10A–3.

(5) Proposed Rule 31.10(d), which pertains to nominating committees, will not apply if the company is subject to a binding obligation that requires a director nomination structure inconsistent with Rule 31.10(d) and such obligation pre-dates the approval date of Rule 31.10(d).

(6) Compliance with proposed Rule 31.10(e), which requires issuers to adopt a code of conduct, will be required on July 31, 2004.

** * * Interpretations and Policies*

.01 Definition of Independence. It is important for investors to have confidence that individuals serving as independent directors do not have a relationship with the listed company that would impair their independence.

The board has a responsibility to make an affirmative determination that no such relationships exist through the application of Rule 31.10(h)(2). Rule 31.10(h)(2) also sets forth certain relationships that preclude a board finding of independence. These objective measures provide transparency to investors and companies, facilitate uniform application of the rules, and ease administration. Because the Exchange does not believe that ownership of company stock by itself would preclude a board finding of independence, it is not included in the aforementioned objective factors. It should be noted that there are additional, more stringent requirements that apply to directors serving on audit committees pursuant to Rule 31.10(b).

The rule's reference to a ''parent or subsidiary'' is intended to cover entities the issuer controls and consolidates with the issuer's financial statements as filed with the Securities and Exchange Commission (but not if the issuer reflects such entity solely as an investment in its financial statements). The reference to executive officer means those officers covered in Exchange Act Rule 16a–1(f). In the context of the definition of family member under Rule 31.10(h)(1), the reference to marriage is intended to capture relationships specified in the rule (parents, children and siblings) that arise as a result of marriage, such as ''in-law'' relationships.

The three year look-back periods referenced in Rules 31.10(h)(2)(A), (C), (E) and (F) commence on the date the relationship ceases. For example, a director employed by the company is not independent until three years after such employment terminates.

Rule 31.10(h)(2)(B) is generally intended to capture situations where a payment is made directly to (or for the benefit of) the director or a family member of the director. For example, consulting or personal service contracts with a director or family member of the director or political contributions to the campaign of a director or a family member of the director would be captured under Rule 31.10(h)(2)(B).

Rule 31.10(h)(2)(D) is generally intended to capture payments to an entity with which the director or family member of the director is affiliated by serving as a partner, controlling shareholder or executive officer of such entity. Under exceptional circumstances, such as where a director has direct, significant business holdings, it may be appropriate to apply the corporate measurements in Rule 31.10(h)(2)(D), rather than the individual measurements in Rule 31.10(h)(2)(B). Issuers should contact the Exchange if they wish to apply the rule in this manner. The reference to a partner in Rule 31.10(h)(2)(D) is not intended to include limited partners. It should be noted that the independence requirements of Rule 31.10(h)(2)(D) are broader than Exchange Act Rule 10A–3(e)(8). Under Rule 31.10(h)(2)(D), a director who is, or who has a family member who is, an executive officer of a charitable organization may not be considered independent if the company makes payments to the charity in excess of the greater of 5% of the charity's revenues or $200,000. However, the Exchange encourages companies to consider other situations where a director or his or her family member and the company each have a relationship with the same charity when assessing director independence.

For purposes of determining whether a lawyer is eligible to serve on an audit committee, Exchange Act Rule 10A–3 generally provides that any partner in a law firm that receives payments from the issuer is ineligible to serve on that issuer's audit committee. In determining whether a director may be considered independent for purposes other than the audit committee, payments to a law firm would generally be considered under Rule 31.10(h)(2)(D), which looks to whether the payment exceeds the greater of 5% of the recipients gross revenues or $200,000; however, if the firm is a sole proprietorship, Rule 31.10(h)(2)(B), which looks to whether the payment exceeds $60,000, applies.

Rule 31.10(h)(2)(G) provides a different measure for independence for investment companies in order to harmonize with the Investment Company Act of 1940. In particular, in lieu of Rules 31.10(h)(2)(A)–(F), a director who is an ''interested person'' of the company as defined in Section 2(a)(19) of the Investment Company Act of 1940, other than in his or her capacity as a member of the board of directors or any board committee, would not be considered independent.

.02 Majority Independent Board. Independent directors play an important role in assuring investor confidence. Through the exercise of independent judgment, they act on behalf of investors to maximize shareholder value in the companies they oversee and guard against conflicts of interest. Requiring that the board be comprised of a majority of independent directors empowers such directors to carry out more effectively these responsibilities.

.03 Audit Committees.

Audit Committee Composition. Audit committees are required to have a minimum of three members and be comprised only of independent directors. In addition to satisfying the independent director requirements under Rule 31.10(h)(2), audit committee members must meet the criteria for independence set forth in Exchange Act Rule 10A–3(b)(1) (subject to the exemptions provided in Exchange Act Rule 10A–3(c)): They must not accept any consulting, advisory, or other compensatory fee from the company other than for board service, and they must not be an affiliated person of the company. It is recommended that an issuer disclose in its annual proxy (or, if the issuer does not file a proxy, in its Form 10–K or 20–F) if any director is deemed independent but falls outside the safe harbor provisions of Exchange Act Rule 10A–3(e)(1)(ii). A director who qualifies as an audit committee financial expert under Item 401(h) of Registration S–K, Item 401(e) of Regulation S–B, or Item 3 of Form N–CSR (in the case of a registered management investment company) is presumed to qualify as a financially sophisticated audit committee member under Rule 31.10(b)(1)(A).

Audit Committee Responsibilities and Authority. Audit committees must have the specific audit committee responsibilities and authority necessary to comply with Exchange Act Rules 10A–3(b)(2)–(5) (subject to the exemptions provided in Exchange Act Rule 10A–3(c)), concerning responsibilities relating to registered public accounting firms; complaints relating to accounting; internal accounting controls or auditing matters; authority to engage advisors; and funding. Audit committees for investment companies must also establish procedures for the confidential, anonymous submission of concerns regarding questionable accounting or auditing matters by employees of the investment adviser, administrator, principal underwriter, or any other provider of accounting related services for the investment company, as well as employees of the investment company.

Audit Committee Charter. Each issuer is required to adopt a formal written charter that specifies the scope of its responsibilities and the means by which it carries out those responsibilities; the outside auditor's accountability to the audit committee; and the audit committee's responsibility to ensure the independence of the outside auditor. Consistent with this, the charter must specify all audit committee responsibilities set forth in Exchange

Act Rules 10A–3(b)(2)–(5). Exchange Act Rule 10A–3(b)(3)(ii) requires that each audit committee must establish procedures for the confidential, anonymous submission by employees of the listed issuer of concerns regarding questionable accounting or auditing matters. The rights and responsibilities as articulated in the audit committee charter empower the audit committee and enhance its effectiveness in carrying out its responsibilities. Rule 31.10(b)(2) imposes additional requirements for investment company audit committees that must also be set forth in audit committee charters for these issuers.

.04 Executive Sessions of Independent Directors. Regularly scheduled executive sessions encourage and enhance communication among independent directors. It is contemplated that executive sessions will occur at least twice a year, and perhaps more frequently, in conjunction with regularly scheduled board meetings.

.05 Independent Director Oversight of Executive Compensation. Independent director oversight of executive officer compensation helps assure that appropriate incentives are in place, consistent with the board's responsibility to maximize shareholder value. The rule is intended to provide flexibility for an issuer to choose an appropriate board structure and to reduce resource burdens, while ensuring independent director control of compensation decisions.

.06 Independent Director Oversight of Director Nominations. Independent director oversight of nominations enhances investor confidence in the selection of well-qualified director nominees, as well as independent nominees as required by the rules. Rule 31.10(d) is also intended to provide flexibility for a company to choose an appropriate board structure to reduce resource burdens, while ensuring that independent directors approve all nominations.

Rule 31.10(d) does not apply in cases where the right to nominate a director legally belongs to a third party. For example, investors may negotiate the right to nominate directors in connection with an investment in the company, holders of preferred stock may be permitted to nominate or appoint directors upon certain defaults, or the company may be a party to a shareholders' agreement that allocates the right to nominate some directors. Because the right to nominate directors in these cases does not reside with the company, independent director approval would not be required. This rule is not applicable if the company is subject to a binding obligation that requires a director nomination structure inconsistent with Rule 31.10(d) and such obligation pre-dates the approval date of Rule 31.10(d).

.07 Code of Conduct Ethical behavior is required and expected of every corporate director, officer and employee whether or not a formal code of conduct exists. The requirement of a publicly available code of conduct applicable to all directors, officers and employees of an issuer is intended to demonstrate to investors that the board and management of Exchange issuers have carefully considered the requirement of ethical dealing and have put in place a system to ensure that they become aware of and take prompt action against any questionable behavior. For company personnel, a code of conduct with enforcement provisions provides assurance that reporting of questionable behavior is protected and encouraged, and fosters an atmosphere of self-awareness and prudent conduct.

Rule 31.10(e) requires issuers to adopt a code of conduct complying with the definition of a ''code of ethics'' under Section 406(c) of the Sarbanes-Oxley Act and any regulations promulgated thereunder by the Securities and Exchange Commission. Thus, the code must include such standards as are reasonably necessary to promote the ethical handling of conflicts of interest, full and fair disclosure, and compliance with laws, rules and regulations, as specified by the Sarbanes-Oxley Act. However, the code of conduct required by Rule 31.10(e) must apply to all directors, officers and employees. Issuers can satisfy this obligation by adopting one or more codes of conduct, such that all directors, officers and employees are subject to a code that satisfies the definition of a ''code of ethics.''

As the Sarbanes-Oxley Act recognizes, investors are harmed when the real or perceived private interests of a director, officer or employee is in conflict with the interests of the company, as when the individual receives improper personal benefits as a result of his or her position with the company, or when the individual has other duties, responsibilities or obligations that run counter to his or her duty to the company. Also, the disclosures an issuer makes to the Securities and Exchange Commission are the essential source of information about the company for regulators and investors—there can be no question about the duty to make them fairly, accurately and timely. Finally, illegal action must be dealt with swiftly and the violators reported to the appropriate authorities. Each code of conduct must require that any waiver of the code for executive officers or directors may be made only by the board and must be promptly disclosed to shareholders, along with the reasons for the waiver. This disclosure requirement provides investors the comfort that waivers are not granted except where they are truly necessary and warranted, and that they are limited and qualified so as to protect the company to the greatest extent possible. Consistent with applicable law, domestic issuers shall disclose such waivers in a Form 8–K within five business days. Foreign private issuers shall disclose such waivers either in a Form 6–K or in the next Form 20–F.

Each code of conduct must also contain an enforcement mechanism that ensures prompt and consistent enforcement of the code, protection for persons reporting questionable behavior, clear and objective standards for compliance, and a fair process by which to determine violations.

.08 Exemptions. (a) Controlled Companies. This exemption recognizes that majority shareholders, including parent companies, have the right to select directors and control certain key decisions, such as executive officer compensation, by virtue of their ownership rights. In order for a group to exist for purposes of this rule, the shareholders must have publicly filed a notice that they are acting as a group (e.g., a Schedule 13D). A controlled company not relying upon this exemption need not provide any special disclosures about its controlled status. It should be emphasized that this controlled company exemption does not extend to the audit committee requirements under Rule 31.10(b) or the requirement for executive sessions of independent directors under Rule 31.10(a)(2).

(b) Registered Management Investment Companies. Management investment companies registered under the Investment Company Act of 1940 are already subject to a pervasive system of federal regulation in certain areas of corporate governance covered by Rule 31.10. In light of this, the Exchange exempts from Rules 31.10(a), (c), (d) and (e) management investment companies registered under the Investment Company Act of 1940.

(c) Asset-backed Issuers and Other Passive Issuers. Because of their unique attributes, Rules 31.10(a)–(e) do not apply to asset-backed issuers and issuers that are organized as trusts (including trusts issuing UIT interests (including IPRs) and Trust Issued Receipts, as those terms are defined in

Rule 1.1 and the Interpretations and Policies thereunder, provided that such trusts meet the requirements of this Rule 31.10) or other unincorporated associations that do not have a board of directors or persons acting in a similar capacity and whose activities are limited to passively owning or holding (as well as administering and distributing amounts in respect of) securities, rights, collateral or other assets on behalf of or for the benefit of the holders of the listed securities.

(d) Cooperatives. Certain member-owned cooperatives that list their preferred stock are required to have their common stock owned by their members. Because of their unique structure and the fact that they do not have a publicly traded class of common stock, such entities are exempt from Rules 31.10(a), (c), (d) and (e).

.09 References to executive officers in Rule 31.10 mean those officers covered in Exchange Act Rule 16a–1(f).

.10 The following is the text of Rule 31.10 as in effect immediately prior to July 9, 2004.

Rule 31.10 Independent Directors

The Exchange requires an issuer to have at least two independent directors. For purposes of this section, ''independent director'' shall mean a person other than an officer or employee of the company or its subsidiaries or any other individual having a relationship which, in the opinion of the board of directors, would interfere with the exercise of independent judgment in carrying out the responsibilities of a director. The issuer shall maintain an audit committee (i) composed of such independent directors and (ii) that complies with the listing standards set forth in Rule 10A–3 of the Securities Exchange Act of 1934, as amended (''Exchange Act''). If a member of the audit committee ceases to be independent in accordance with the requirements of Exchange Act Rule 10A–3 for reasons outside the member's reasonable control, that person, with written notice to the Exchange, may remain an audit committee member of the listed issuer until the earlier of the next annual shareholders meeting of the listed issuer or one year from the occurrence of the event that caused the member to be no longer independent.

* * * * *

Rule 31.60 Publication of Annual Report

(a) A listed company is required to publish and furnish to its shareholders (or to holders of any other listed security when its common stock is not listed on a national securities exchange) an annual report containing audited financial statements of the company and its subsidiaries. Six copies of the report must be filed with the Exchange.

(b) An issuer that receives an audit opinion that contains a going concern qualification must make a public announcement through the news media disclosing the receipt of such qualification. Prior to the release of the public announcement, the issuer must provide the text of the public announcement to the Regulatory Services Division of the Exchange. The public announcement shall be provided to the Regulatory Service Division and released to the media not later than seven calendar days following the filing of such audit opinion in a public filing with the Securities and Exchange Commission.

* * * * *

Rule 31.94 Suspension and Delisting Policies

A.–B. No change.

C. Application of Policies

(a)–(c) No change.

(d) Failure to comply with Listing Agreements—The securities of a company failing (or for the transfer agent or registrar of which fails) to comply with the Exchange rules in any material respect (*e.g.*, failure to distribute annual reports when due, failure to report interim earnings, failure to observe Exchange policies regarding timely disclosure of important corporate developments, failure to solicit proxies, issuance of additional shares of a listed class without prior listing thereof, failure to obtain shareholder approval of corporate action without prior listing thereof, failure to obtain shareholder approval of corporate action where required by Exchange policies, *failure to comply with Exchange corporate governance listing requirements,* etc.) are subject to suspension from dealings and, unless prompt corrective action is taken, removal from listing.

(e) Convertible Bonds—A debt security convertible into a listed equity security will be reviewed when the underlying equity security is delisted and will be delisted when the underlying equity security is no longer subject to real-time trade reporting. In addition, if the common stock is delisted for violation of any of the following Exchange rules relating to corporate governance, the Exchange will also delist any listed debt securities convertible into that common stock:

Rule 31.9—Conflicts of Interest
Rule 31.10—[Independent Directors] *Corporate Governance*
Rule 31.11—Common Voting Rights
Rule 31.12—Quorum
Rule 31.13—Preferred Voting Rights
Rule 31.14—Bondholders Remedies Upon Default

(f) No change.

D.–I. No change.

* * * * *

Rule 31.96 Notices to Exchange

A. No change.

B. Changes in Officers or Directors

A listed company is required to notify the Exchange promptly (and confirm in writing) (i) of any changes of officers or directors, [and] (ii) after an executive officer of the listed company becomes aware of any material noncompliance by the listed company with the requirements of *Rules 31.7(2), 31.9, 31.10 and 31.60(b) and Exchange Act* Rule 10A–3 [of the Securities Exchange Act of 1934, as amended]*, (iii) upon learning of the event or circumstance that causes the listed company to no longer comply with the board composition requirements set forth in Rule 31.10(a)(1), and (iv) upon learning of the event or circumstance that causes the listed company to rely on Rules 31.10(b)(4)(A) or (B).*

C.–H. No change.

* * * * *

[Rule 31.97 Reserved for additional original listing standards.]

* * * * *

Forms for Listing

Form 1

Listing Agreement

_____ (the ''Company''), in consideration of the listing of its securities, hereby agrees with the Chicago Board Options Exchange, Incorporated (the ''Exchange''), that it will:

1. Promptly notify the Exchange of the following:

(a) changes in the general character or nature of its business, its principal executive officers, directors *(including any time a majority of the Company's Board of Directors fails to be comprised of independent directors)*, its independent public accountants, its transfer agent or registrar and material noncompliance by the listed company with *the requirements of Rules 31.7(2), 31.9, 31.10 and 31.60(b) and Exchange Act* Rule 10A–3 [of the Securities Exchange Act of 1934, as amended (''Exchange Act'')], after an executive officer becomes aware of such noncompliance;

(b)–(k) No change.

2.–13. No change.

14. *Comply with the corporate governance listing requirements set forth in Rules 31.7(2), 31.9, 31.10 and 31.60(b), including the maintenance* [Maintain] *of* at least *a majority of* [two] independent directors [(defined as directors who are not officers or beneficial holders of 10% or more of the securities of the Company or affiliates of such persons and who, in the view of the Company's Board of Directors, are free of any relationship that would interfere with the exercise of independent judgment)] on the Company's Board of Directors *and compliance with Exchange Act Rule 10A–3. No director shall be qualified as independent unless the Company's Board of Directors affirmatively determines that the director qualifies as an ''independent director'' pursuant to Rule 31.10(h)(2).*

15.–27. No change.

28. Comply with Exchange rules, policies and procedures as in effect and as they may be amended from time to time [and with the requirements of Exchange Act Rule 10A–3].

* * * * *

II. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

In its filing with the Commission, the Exchange included statements concerning the purpose of and basis for the proposed rule change and discussed any comments it received on the proposed rule change. The text of these statements may be examined at the places specified in Item III below. The Exchange has prepared summaries, set forth in sections A, B, and C below, of the most significant aspects of such statements.

A. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

1. Purpose

The Exchange is proposing a comprehensive package of corporate governance reforms with respect to its non-option listing standards in order to promote accountability, transparency, and integrity of companies listing their non-option securities on the Exchange.[5] The proposal encompasses significant changes in the following areas based on the corporate governance reforms of the National Association of Securities Dealers, Inc. (''NASD'') through its subsidiary, The Nasdaq Stock Market, Inc. (''Nasdaq''):[6] board of directors composition and independence standards; compensation of executive officers; nominations; audit committees; and ethics and disclosure obligations. The Commission has already approved the Exchange's proposed rule change relating to shareholder approval requirements for equity compensation plans.[7]

Independent Directors. Current CBOE Rule 31.10 requires an issuer to have at least two independent directors and defines ''independent director'' as ''a person other than an officer or employee of the company or its subsidiaries or any other individual having a relationship which, in the opinion of the board of directors, would interfere with the exercise of independent judgment in carrying out the responsibilities of a director.'' Other than these standards, the Exchange rules contain no other criteria with respect to the definition of ''independent director'' and to board composition requirements. The Exchange proposes to replace current CBOE Rule 31.10 with new rules because the Exchange believes that it is important for investors to have confidence that individuals serving as independent directors do not have a relationship with the listed company that would impair their independence. In this regard, proposed CBOE Rule 31.10(h)(2) would provide new standards with respect to the definition of ''independent director,'' and proposed CBOE Rule 31.10(a) would set forth new requirements for the composition of the board of directors.[8] In addition, through the application of CBOE Rule 31.10(h)(2), the proposed rules would require the board to make an affirmative determination that no such relationships exist. Proposed CBOE Rule 31.10(h)(2) also would preclude a board finding of independence with respect to relationships between directors and certain individuals. The Exchange believes that these objective measures would provide transparency to investors and companies, facilitate uniform application of the rules, and ease administration.

The reference to a ''parent or subsidiary'' in proposed CBOE Rule 31.10(h)(2) would cover entities that the issuer controls and consolidates with the issuer's financial statements as filed with the Commission, but not if the issuer reflects such an entity solely as an investment in its financial statements. In the context of the definition of ''family member'' under proposed CBOE Rule 31.10(h)(1), the reference to marriage would capture relationships specified in the rule (parents, children, and siblings) that would arise as a result of marriage, such as ''in-law'' relationships.

The three-year look-back periods referenced in proposed CBOE Rules 31.10(h)(2)(A), (C), (E) and (F) would commence on the date the relationship ceases. Proposed CBOE Rule 31.10(h)(2)(B) would generally capture situations where a payment is made directly to (or for the benefit of) the director or a family member of the director. Proposed CBOE Rule 31.10(h)(2)(D) would generally capture payments to an entity which the director or family member of the director is affiliated by serving as a partner, controlling shareholder or executive officer of such entity. Under proposed CBOE Rule 31.10(h)(2)(D), a director who is, or who has a family member who is, an executive officer of a charitable organization would not be considered independent if the company makes payments to the charity in excess of the greater of 5% of the charity's revenues or $200,000. Proposed CBOE Rule 31.10(h)(2)(G) would provide a different measure of independence for investment companies, consistent with the Investment Company Act of 1940.

Independent Board and Board Committees. Proposed CBOE Rule 31.10(a) would require independent directors to comprise a majority of a listed issuer's board of directors,[9] and thus play an important role in assuring investor confidence. The Exchange believes that, through the exercise of independent judgment, they would act on behalf of investors to maximize shareholder value in the companies they oversee, and guard against conflicts of interest. The Exchange believes that requiring that the board be comprised of a majority of independent directors would empower such directors to more effectively carry out these responsibilities. The proposed rule change also would require regularly

[5] In File No. SR–CBOE–2003–31, the Exchange represented that it would adopt additional listing policies and requirements pertaining to issuer corporate governance. *See* Securities Exchange Act Release No. 48838 (November 25, 2003), 68 FR 67708 (December 3, 2003). The Exchange states that this current proposed rule change would serve to satisfy that representation.

[6] *See* Securities Exchange Act Release No. 48745 (November 4, 2003), 68 FR 64154 (November 12, 2003) (approving changes to the corporate governance listing standards of Nasdaq and the New York Stock Exchange, Inc. (''NYSE'')).

[7] *See* Securities Exchange Act Release No. 48737 (October 31, 2003), 68 FR 63150 (November 7, 2003) (SR–CBOE–2003–45).

[8] *See* CBOE Rule 31.10(f), discussed below, regarding entities excepted from these requirements.

[9] Id.

convened executive sessions of independent directors.

Furthermore, proposed CBOE Rule 31.10(c) would require independent director approval of executive officer compensation. The Exchange believes that this oversight would help assure that appropriate incentives are in place, consistent with the board's responsibility to maximize shareholder value and comply with applicable law. Proposed CBOE Rule 31.10(d) also would require independent director approval for director nominations. The Exchange believes that independent director oversight of nominations would enhance investor confidence in the selection of well-qualified director nominees, as well as independent nominees as required by the rules. The Exchange represents that these proposed rules are intended to provide flexibility for a company to choose an appropriate board structure and reduce resource burdens.

Under proposed CBOE Rule 31.10(f)(1), a controlled company would be exempt from the requirements of proposed CBOE Rules 31.10(a), (c), and (d), with the exception of proposed CBOE Rule 31.10(a)(1), which requires a controlled company to disclose in its annual proxy (or, if the issuer does not file a proxy, in its Form 10–K or 20–F) those directors that the board of directors has determined to be independent under Rule 31.10(h)(2), and proposed CBOE Rule 31.10(a)(2), which pertains to executive sessions of independent directors.[10] The rule proposal would define a controlled company as a company of which more than 50% of the voting power is held by an individual, a group or another company. A controlled company relying upon this exemption would be required to disclose in its annual meeting proxy statement (or, if the issuer does not file a proxy, in its Form 10–K or 20–F) that it is a controlled company and the basis for that determination.

Audit Committee Requirements. Proposed CBOE Rule 31.10(b) would restate the Exchange's current audit committee requirements, including the requirement to comply with the listing standards set forth in Rule 10A–3 under the Act, as well as proposed terms that expand the current requirements.[11] Under the proposed rules, audit committees would be required to have a minimum of three members, all of whom would be required to satisfy the independence standards set forth in Rule 10A–3(b)(1) under the Act (subject to applicable exemptions), and proposed CBOE Rule 31.10(h)(2). The proposal also would specify that audit committees must have the specific audit committee responsibilities and authority necessary to comply with Rule 10A–3(b)(2)–(5) under the Act (subject to applicable exemptions). Furthermore, the proposal would require audit committee members to be able to read and understand fundamental financial statements at the time they join the board.

The proposed rule change also would require audit committees to adopt a charter that specifies all audit committee responsibilities required by Rule 10A–3 under the Act. The proposal would require investment company audit committees to establish procedures for the confidential, anonymous submission of concerns regarding questionable accounting or auditing matters by employees of the investment adviser, administrator, principal underwriter, or any other provider of accounting related services for the investment company, as well as employees of the investment company.

Going Concern Qualification. Proposed CBOE Rule 31.60(b) would require issuers to disclose in a press release the receipt of an audit opinion with a going concern qualification. The Exchange states that, ordinarily, the continuation of an entity as a going concern is assumed in financial reporting in the absence of significant evidence to the contrary. If an auditor concludes that substantial doubt exists about the entity's ability to continue as a going concern for a reasonable period of time, however, the auditor provides this conclusion through an explanatory paragraph in the auditor's report. While the audit opinion is available in the Form 10–K, the Exchange believes that receipt of a going concern qualification is so material that it should be brought to the attention of investors and potential investors through a press release issued promptly after the filing of the Form 10–K.

Review of Related Party Transactions. The Exchange proposes to expand its current conflict of interest rule set forth in CBOE Rule 31.9 by requiring the audit committee or another independent body of the board of directors to approve, rather than merely review, related party transactions. All directors that review and approve a related party transaction must be independent as specified under Exchange rules.

Code of Conduct. Proposed CBOE Rule 31.10(e) would require listed companies to adopt and make publicly available a code of conduct applicable to directors, officers, and employees that complies with the definition of a ''code of ethics'' set forth in Section 406(c) of the Sarbanes-Oxley Act of 2002 and any regulations promulgated by the Commission thereunder, and to provide for an enforcement mechanism.[12] Any waivers of the code for directors or executive officers would be required to be approved by the board and be disclosed in a Form 8–K, Form 6–K or Form 20–F. Domestic issuers would be required to disclose such waivers in a Form 8–K within five business days. Foreign private issuers would be required to disclose such waivers either in a Form 6–K or in the next Form 20–F.

Exemptions. Current CBOE Rule 31.7(2) permits non-U.S. issuers listed on the Exchange to obtain exemptions from the Exchange's corporate governance standards if such rules would require the issuer to do anything contrary to the laws and generally accepted commercial and business practice of the issuer's domicile, to the extent such law and generally accepted commercial and business practice is consistent with federal securities laws. To make the current exemption process more transparent, proposed CBOE Rule 31.7(2) would require a foreign issuer to disclose the receipt of a corporate governance exemption from the Exchange in its annual report for the year the exemption is granted and on annual basis thereafter. Such disclosure would be required to be made in the issuer's annual filing of its financial statements with the Commission and the Exchange on Form 20–F, Form 40–F, or in certain cases, Form 10–K.

Since management investment companies registered under the Investment Company Act of 1940 are already subject to a pervasive system of federal regulation, proposed CBOE Rule 31.10(f)(2) would exempt management investment companies registered under the Investment Company Act of 1940 from proposed CBOE Rules 31.10(a), (c), (d) and (e). However, registered management investment companies would be subject to all of the audit committee requirements set forth in CBOE Rule 31.10(b), and open-end management investment companies would be subject to certain provisions of CBOE Rule 31.10(b) audit committee requirements.

In its audit committee rules under the Sarbanes-Oxley Act of 2002, the Commission excluded asset-backed issuers from the new requirements, and allowed markets to exclude from the requirements of Section 10A(m) of the

[10] *See* Amendment No. 1, *supra* note 3.

[11] *See* CBOE Rule 31.10(f), discussed below, regarding entities excepted from these requirements.

[12] *See id.*

Act and Rule 10A–3 thereunder certain ''issuers'' that are organized as trusts or other unincorporated associations having certain characteristics. Accordingly, proposed CBOE Rule 31.10(f)(3) would exempt these entities from proposed CBOE Rules 31.10(a)–(e).

In light of their unique attributes, proposed CBOE Rule 31.10(f)(4) would exempt from proposed CBOE Rules 31.10(a), (c), (d) and (e) certain cooperative entities, such as agricultural cooperatives, that are structured to comply with, among other things, relevant state law and federal tax law and that do not have a publicly traded class of common stock. However, these entities must comply with Section 10A(m) of the Act and Rule 10A–3 thereunder.

Furthermore, CBOE proposes to clarify in proposed CBOE Rule 31.10(f)(5) that business development companies, which are a type of closed-end management investment company defined in Section 2(a)(48) of the Investment Company Act of 1940 that are not registered under that Act, would be subject to all of the Exchange's corporate governance requirements.[13]

Implementation Periods. Consistent with Rule 10A–3 of the Act, CBOE Rules 31.10(a)–(d), (f) and (h) would be effective as set forth below. During the transition period between the date of approval of this proposed rule change and the applicable effective date, listed companies would be required to comply with CBOE Rule 31.10 as in effect immediately prior to the date of approval of this rule filing.[14]

- July 31, 2005 for foreign private issuers and small business issuers (as defined in Rule 12b–2 under the Act); and
- For all other listed issuers, by the earlier of (1) the listed issuer's first annual shareholders meeting after July 31, 2004; or (2) October 31, 2004.

In the case of an issuer with a staggered board, with the exception of the audit committee requirements, the issuer would have until its second annual meeting after January 15, 2004, but not later than December 31, 2005, to implement all of the new requirements, if the issuer would be required to change a director who would not normally stand for election at an earlier annual meeting. Such issuers would be required to comply with the audit committee requirements pursuant to the implementation schedule set forth above.

Issuers that will be listed in conjunction with their initial public offering would be afforded exemptions from all board composition requirements consistent with the exemptions afforded in Rule 10A–3(b)(1)(iv)(A) under the Act. That is, for each committee that the company adopts, the company would be required to have one independent member at the time of listing, a majority of independent members within 90 days of listing, and all independent members within one year. It should be noted, however, that investment companies would not be afforded these exemptions in Rule 10A–3(b)(1)(iv)(A) under the Act. Companies emerging from bankruptcy or which have ceased to be controlled companies would be required to meet the majority independent board requirement within one year. As provided under the proposal, issuers could choose not to adopt a compensation or nomination committee and could instead rely upon a majority of the independent directors to discharge responsibilities under Exchange rules. These issuers would be required to meet the majority independent board requirement within one year of listing.

Companies transferring from other markets with substantially similar board composition requirements would be afforded the balance of any grace period afforded by the other market. Companies transferring from other listed markets that do not have a substantially similar board composition requirements would be afforded one year from the date of listing on the Exchange to comply with the Exchange's board composition requirements. This transition period is not intended to supplant any applicable requirements of Rule 10A–3 under the Act.

Proposed CBOE Rule 31.10(d), which pertains to nominating committees, would not apply if the company is subject to a binding obligation that requires a director nomination structure inconsistent with CBOE Rule 31.10(d) and such obligation pre-dates the approval date of CBOE Rule 31.10(d).

Compliance with proposed CBOE Rule 31.10(e), which requires issuers to adopt a code of conduct, would be required on July 31, 2004.

2. Statutory Basis

The Exchange believes the proposed rule change is consistent with Section 6(b) of the Act[15] in general, and furthers the objectives of Section 6(b)(5)[16] in particular, in that it is designed to prevent fraudulent and manipulative acts and practices, to promote just and equitable principles of trade, to foster cooperation and coordination with persons engaged in facilitating transactions in securities, to remove impediments to and perfect the mechanisms of a free and open market and a national market system, and, in general, protect investors and the public interest and is not designed to permit unfair discrimination between customers, issuers, brokers, or dealers. Specifically, the proposed rule change is designed to increase investor protection by promoting accountability, transparency, and integrity by listed companies.

B. Self-Regulatory Organization's Statement on Burden on Competition

The proposed rule change will impose no burden on competition that is not necessary or appropriate in furtherance of the purposes of the Act.

C. Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received from Members, Participants or Others

No written comments were solicited or received with respect to the proposed rule change.

III. Solicitation of Comments

Interested persons are invited to submit written data, views, and arguments concerning the foregoing, including whether the proposed rule change is consistent with the Act. Comments may be submitted by any of the following methods:

Electronic Comments

- Use the Commission's Internet comment form (*http://www.sec.gov/rules/sro.shtml*); or
- Send an e-mail to *rule-comments@sec.gov.* Please include File Number SR–CBOE–2004–28 on the subject line.

Paper Comments

- Send paper comments in triplicate to Jonathan G. Katz, Secretary, Securities and Exchange Commission, 450 Fifth Street, NW., Washington, DC 20549–0609.

All submissions should refer to File Number SR–CBOE–2004–28. This file number should be included on the subject line if e-mail is used. To help the Commission process and review your comments more efficiently, please use only one method. The Commission will post all comments on the Commission's Internet Web site (*http://www.sec.gov/rules/sro.shtml*). Copies of the submission, all subsequent amendments, all written statements with respect to the proposed rule

[13] *See* Amendment No. 1, *supra* note 3.

[14] *See* proposed CBOE Rule 31.10.10.

[15] 15 U.S.C. 78f(b).

[16] 15 U.S.C. 78f(b)(5).

change that are filed with the Commission, and all written communications relating to the proposed rule change between the Commission and any person, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. 552, will be available for inspection and copying in the Commission's Public Reference Section, 450 Fifth Street, NW., Washington, DC 20549. Copies of such filing also will be available for inspection and copying at the principal office of the CBOE. All comments received will be posted without change; the Commission does not edit personal identifying information from submissions. You should submit only information that you wish to make available publicly. All submissions should refer to File Number SR–CBOE–2004–28 and should be submitted on or before August 5, 2004.

IV. Commission's Findings and Order Granting Accelerated Approval of Proposed Rule Change

After careful review, the Commission finds that the proposed rule change is consistent with the requirements of the Act and the rules and regulations thereunder applicable to a national securities exchange.[17] In particular, the Commission finds that the proposed rule change is consistent with Section 6(b)(5) of the Act [18] in that it is designed, among other things, to facilitate transactions in securities, to prevent fraudulent and manipulative acts and practices, to promote just and equitable principles of trade, to remove impediments to and perfect the mechanism of a free and open market and a national market system, and, in general, to protect investors and the public interest, and does not permit unfair discrimination among issuers.

In the Commission's view, the proposed rule change will foster greater transparency, accountability, and objectivity in the oversight by, and decision-making processes of, the boards and key committees of CBOE listed issuers. The proposal also will promote compliance with high standards of conduct by the issuers' directors and management. The Commission notes that the CBOE's proposal is similar to proposals of other self-regulatory organizations (''SROs'') recently approved by the Commission.

The CBOE has requested that the Commission grant accelerated approval to the proposed rule change, as amended, so that the proposed corporate governance listing standards can be quickly implemented. The Commission believes that the revisions proposed by the Exchange significantly align the corporate governance standards proposed for companies listed on the CBOE with the standards approved by the Commission for companies listed on other SROs.[19] The Commission believes it is appropriate to accelerate approval of the proposed rule change so that the comprehensive set of strengthened corporate governance standards for companies listed on the CBOE may be implemented on generally the same timetable (with some modification of certain deadlines) as that for similar standards adopted for issuers listed on other SROs. The Commission therefore finds good cause, consistent with Section 19(b)(2) of the Act,[20] to approve the proposed rule change, as amended, prior to the thirtieth day after the date of publication of notice of filing thereof in the **Federal Register**.

V. Conclusion

For the foregoing reasons, the Commission finds that the proposed rule change, as amended, is consistent with the Act and the rules and regulations thereunder applicable to a national securities exchange.

It is therefore ordered, pursuant to Section 19(b)(2) of the Act,[21] that the proposed rule change, as amended (SR–CBOE–2004–28) be, and hereby is, approved on an accelerated basis.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.[22]

Dated:

Margaret H. McFarland,

Deputy Secretary.

[FR Doc. 04–16052 Filed 7–14–04; 8:45 am]

BILLING CODE 8010–01–P

[17] 15 U.S.C. 78f(b). In approving this proposal, the Commission has considered the proposed rule's impact on efficiency, competition and capital formation. 15 U.S.C. 78c(f).

[18] 15 U.S.C. 78f(b)(5).

[19] *See supra* note 6.

[20] 15 U.S.C. 78s(b)(2).

[21] 15 U.S.C. 78s(b)(2).

[22] 17 CFR 200.30–3(a)(12).

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–49994; File No. SR–CHX–2004–20]

Self-Regulatory Organizations; Notice of Filing and Immediate Effectiveness of Proposed Rule Change by The Chicago Stock Exchange, Incorporated to Reinstate and Extend a Pilot Rule Interpretation Relating To Trading of Nasdaq/National Market Securities in Subpenny Increments

July 9, 2004.

Pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 (''Act'') [1] and Rule 19b–4 thereunder,[2] notice is hereby given that on July 6, 2004, the Chicago Stock Exchange, Incorporated (''CHX'' or ''Exchange'') filed with the Securities and Exchange Commission (''Commission'') the proposed rule change, as described in Items I and II, below, which Items have been prepared by the Exchange. The Exchange has filed this proposed rule change pursuant to Section 19(b)(3)(A) of the Act [3] and Rule 19b–4(f)(6) thereunder,[4] which renders the proposal effective upon filing with the Commission. The Commission is publishing this notice to solicit comment on the proposed rule change from interested persons.

I. Self-Regulatory Organization's Statement of the Terms of Substance of the Proposed Rule Change

The Exchange proposes to immediately reinstate and extend through June 30, 2005, the pilot rule interpretation relating to the trading of Nasdaq/National market securities in subpenny increments. The CHX represents that it does not propose to make any substantive or typographical changes to the pilot; the only change is to immediately reinstate the pilot and extend its expiration date through June 30, 2005. The text of the proposed rule change is available at the Commission and at the CHX.

II. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

In its filing with the Commission, the Exchange included statements concerning the purpose of and basis for the proposed rule change and discussed any comments it received regarding the proposal. The text of these statements

[1] 15 U.S.C. 78s(b)(1).

[2] 17 CFR 240.19b–4.

[3] 15 U.S.C. 78s(b)(3)(A).

[4] 17 CFR 240.19b–4(f)(6).

may be examined at the places specified in Item IV below. The CHX has prepared summaries, set forth in Sections A, B, and C below, of the most significant aspects of such statements.

A. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

1. Purpose

On April 6, 2001, the Commission approved, on a pilot basis through July 9, 2001, a pilot rule interpretation (CHX Article XXX, Rule 2, Interpretation and Policy .06 ''Trading in Nasdaq/NM Securities in Subpenny Increments'') [5] that requires a CHX specialist (including a market maker who holds customer limit orders) to better the price of a customer limit order in his book which is priced at the national best bid or offer (''NBBO'') by at least one penny if the specialist determines to trade with an incoming market or marketable limit order. The pilot, which was approved in conjunction with exemptive relief granted by the Commission to allow for trading in Nasdaq/NM securities in subpenny increments,[6] has been extended eight times and expired on June 30, 2004.[7] The CHX now proposes to immediately reinstate and extend the pilot through June 30, 2005. The CHX proposes no other changes to the pilot, other than immediately reinstating and extending it through June 30, 2005.

2. Statutory Basis

The CHX believes the proposal is consistent with the requirements of the Act and the rules and regulations thereunder that are applicable to a national securities exchange, and, in particular, with the requirements of Section 6(b).[8] The CHX believes the proposal is consistent with Section 6(b)(5) of the Act [9] in that it is designed to promote just and equitable principles of trade, to remove impediments to and perfect the mechanism of a free and open market and a national market system, and, in general, to protect investors and the public interest.

B. Self-Regulatory Organization's Statement on Burden on Competition

The Exchange does not believe that the proposed rule change will impose any inappropriate burden on competition.

C. Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received From Members, Participants or Others

No written comments were either solicited or received.

III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action

The Exchange asserts that the proposed rule change is immediately effective pursuant to Section 19(b)(3)(A) of the Act [10] and Rule 19b–4(f)(6) thereunder [11] because it (1) Does not significantly affect the protection of investors or the public interest; (2) does not impose any significant burden on competition; and (3) does not become operative for 30 days from the date on which it was filed, or such shorter time as the Commission may designate if consistent with protection of investors and the public interest.

The Exchange has requested the Commission to waive the 30-day operative delay and the five-day pre-filing notice requirement. The Commission believes waiving the 30-day operative delay is consistent with the protection of investors and the public interest because it will allow the pilot to be reinstated and continue uninterrupted through June 30, 2005.[12] The Commission has also determined to waive the five-day pre-filing notice requirement. At any time within 60 days of the filing of the proposed rule change, the Commission may summarily abrogate such proposed rule change if it appears to the Commission that such action is necessary or appropriate in the public interest, for the protection of investors, or otherwise in furtherance of the purposes of the Act.

IV. Solicitation of Comments

Interested persons are invited to submit written data, views, and arguments concerning the foregoing, including whether the proposed rule change is consistent with the Act. Comments may be submitted by any of the following methods:

Electronic Comments

- Use the Commission's Internet comment form (*http://www.sec.gov/rules/sro.shtml*); or
- Send an e-mail to *rule-comments@sec.gov.* Please include SR–CHX–2004–20 on the subject line.

Paper Comments

- Send paper comments in triplicate to Jonathan G. Katz, Secretary, Securities and Exchange Commission, 450 Fifth Street, NW., Washington, DC 20549–0609.

All submissions should refer to SR–CHX–2004–20. This file number should be included on the subject line if e-mail is used. To help the Commission process and review your comments more efficiently, please use only one method. The Commission will post all comments on the Commission's Internet Web site (*http://www.sec.gov/rules/sro.shtml*). Copies of the submission, all subsequent amendments, all written statements with respect to the proposed rule change that are filed with the Commission, and all written communications relating to the proposed rule change between the Commission and any person, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. 552, will be available for inspection and copying in the Commission's Public Reference Section, 450 Fifth Street, NW., Washington, DC 20549. Copies of such filing also will be available for

[5] *See* Securities Exchange Act Release No. 44164 (April 6, 2001), 66 FR 19263 (April 11, 2001) (SR–CHX–2001–07).

[6] In proposed Regulation NMS, the Commission proposed rules that would prohibit national securities exchanges, national securities associations, alternative trading systems, vendors, brokers and dealers from displaying, ranking, or accepting bids, offers or orders in subpenny increments in most covered securities. *See* Proposed Rule 612 under the Act. The CHX represents that nothing in proposed Regulation NMS, however, would prohibit trading in subpenny increments. As a result, the Exchange believes that its pilot rule would remain in place, through its proposed new date of effectiveness, if Regulation NMS were adopted in its current form. The Exchange recognizes, however, that the exemptive relief it has been granted—to allow the Exchange's members to display their quotes in penny increments while trading in subpenny increments—would be superseded if Regulation NMS's currently proposed provisions are adopted. The Exchange has stated that it will undertake to work with the Commission to ensure that the pilot program would be consistent with the rules and regulations contained in Regulation NMS, when it is adopted. Telephone conversation between Kathleen Boege, Vice President and Associate General Counsel, CHX, and Gordon Fuller, Counsel to the Assistant Director, Division of Market Regulation, Commission, on July 9, 2004.

[7] *See* Securities Exchange Act Release Nos. 44535 (July 10, 2001), 66 FR 37251 (July 17, 2001) (extending pilot through November 5, 2001); 45062 (November 15, 2001), 66 FR 58768 (November 23, 2001) (extending pilot through January 14, 2002); Securities Exchange Act Release No. 45386 (February 1, 2002), 67 FR 6062 (February 8, 2002) (extending pilot through April 15, 2002); 45755 (April 15, 2002), 67 FR 19607 (April 22, 2002) (extending pilot through September 30, 2002); 46587 (October 2, 2002), 67 FR 63180 (October 10, 2002) (extending pilot through January 31, 2003); 47372 (February 14, 2003), 68 FR 8955 (February 26, 2003) (extending pilot through May 31, 2003); 47951 (May 30, 2003), 68 FR 34448 (June 9, 2003) (extending pilot through December 1, 2003); 48871 (December 3, 2003), 68 FR 69097 (December 11, 2003) (extending pilot through June 30, 2004).

[8] 15 U.S.C. 78f(b).

[9] 15 U.S.C. 78f(b)(5).

[10] 15 U.S.C. 78s(b)(3)(A).

[11] 17 CFR 240.19b–4(f)(6).

[12] For purposes only of accelerating the operative date of this proposal, the Commission has considered the proposed rule's impact on efficiency, competition, and capital formation. *See* 15 U.S.C. 78c(f).

inspection and copying at the principal office of the Exchange. All comments received will be posted without change; the Commission does not edit personal identifying information from submissions. You should submit only information that you wish to make available publicly. All submissions should refer to SR–CHX–2004–20 and should be submitted on or before August 5, 2004.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.[13]

Margaret H. McFarland,

Deputy Secretary.

[FR Doc. 04–16048 Filed 7–14–04; 8:45 am]

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SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–49989; File No. SR–FICC–2004–12]

Self-Regulatory Organizations; Fixed Income Clearing Corporation; Notice of Filing and Immediate Effectiveness of Proposed Rule Change to Amend the Fee Structure of the Government Securities Division Regarding Late Notifications of Repo Collateral Substitutions and to Designate an Additional High Volume Repo Substitution Day Trigger

July 8, 2004.

Pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 (''Act'')[1] and Rule 19b–4 thereunder[2] notice is hereby given that on June 15, 2004, the Fixed Income Clearing Corporation (''FICC'') filed with the Securities and Exchange Commission (''Commission'') the proposed rule change described in Items I and II below, which Items have been prepared primarily by FICC. FICC filed the proposed rule change pursuant to Section 19(b)(3)(A) under the Act[3] and Rule 19b–4(f)(6) thereunder[4] whereby the proposal is effective upon filing with the Commission. The Commission is publishing this notice to solicit comments on the proposed rule change from interested persons.

I. Self-Regulatory Organization's Statement of the Terms of Substance of the Proposed Rule Change

The purpose of the proposed rule change is to amend the fee structure of FICC's Government Securities Division (''GSD'') regarding late notifications of repo collateral substitutions and to designate an additional high volume repo substitution day trigger.

II. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

In its filing with the Commission, FICC included statements concerning the purpose of and basis for the proposed rule change and discussed any comments it received on the proposed rule change. The text of these statements may be examined at the places specified in Item IV below. FICC has prepared summaries, set forth in sections A, B, and C below of the most significant aspects of such statements.

(A) Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

1. Proposed Fee Structure Amendment

The GSD's Rules contain two deadlines for the submission of required repo collateral substitution notifications to FICC: (i) A deadline of noon, after which the dealer member that initiated the substitution is subject to a late fee of $500 per substitution notification and (ii) an absolute deadline of 12:30 p.m., after which the rules require that the GSD reject the substitution notification. FICC extends the noon and 12:30 p.m. submission deadlines by one hour on those days that The Bond Market Association (''TBMA'') announces in advance will be high volume days. FICC also can trigger the designation of a day as a high volume day.

The proposed rule filing: (i) Lowers the $500 late fee to $100 for notifications received after the noon deadline, (ii) removes the absolute deadline of 12:30 p.m. after which time notifications are to be rejected, (iii) provides that notifications received after the 12:30 p.m. deadline will be processed by FICC on a good faith basis only, and (iv) imposes a fee of $250 for notifications received and processed after the 12:30 p.m. deadline. These changes are being done in consideration of the manual process currently involved in submitting the required notifications. Specifically, FICC provides a substitution notification screen that participants use to submit collateral substitution requests to FICC. However, the process required to complete the notification screen is labor intensive and subject to the typical inefficiencies and errors associated with manual processing. Furthermore, regarding repos done on a blind-brokered basis, which is how the vast majority of repos are executed, the repo dealer must contact the repo broker to arrange for the substitution since the repo dealer does not know its original counterparty. The repo broker then contacts the reverse repo dealer to notify it of the substitution. The interaction between repo brokers and counterparty dealers further lengthens the time required to effect a substitution notification. In certain instances, the assessments of fees against the initiating-dealer counterparty have resulted in painstaking efforts to ''identify'' the FICC member that caused the late notification. These efforts may at times strain the critical relationships between repo brokers and dealers.

FICC believes that until it provides a more comprehensive automated service for facilitating the timely and efficient processing of collateral substitution notifications to members, it is inappropriate to impose an absolute deadline after which it rejects a substitution notification. FICC proposes that any notification received after 12:30 p.m. be processed on a good faith basis only and subject to a late fee of $250 if processed by FICC. Also for this reason, FICC believes that the fee associated with the late submission of such notifications should be lowered to $100 for notifications received after 12 p.m. The 12 p.m. and 12:30 p.m. deadlines will continue to be extended by an hour on those days indicated by TBMA as high volume repo substitution days as well as those days which FICC designates as high volume days.

2. Designation of an Additional High Volume Repo Substitution Day Trigger

As stated above, FICC extends the noon and 12:30 p.m. submission deadlines by one hour on those days that TBMA announces in advance will be high volume days. The rules currently provide FICC with the authority to trigger a designation of a high volume day as well.[5] Up until this point, the event used by FICC to trigger a high volume day has been the receipt of more than 150 collateral substitution notifications in the aggregate by the GSD's repo broker members.

FICC, after consultation with TBMA and its members, now seeks to designate the receipt by any one repo broker of 40 or more collateral substitution notifications as another high volume day trigger. FICC has experienced days where the number of notifications did

[13] 17 CFR 200.30–3(a)(12).

[1] 15 U.S.C. 78s(b)(1).

[2] 17 CFR 240.19b–4.

[3] 15 U.S.C. 78s(b)(3)(A).

[4] 17 CFR 240.19b–4(f)(6).

[5] This authority was given to the Government Securities Clearing Corporation (''GSCC''), FICC's predecessor. Securities Exchange Act Release No. 46855 (November 20, 2002), 67 FR 70987.

not exceed 150 across all of the repo brokers, but one or more repo brokers have each received 40 or more requests. Such a large number of requests was and continues to be extremely burdensome on repo brokers, and with such large numbers, they are not able to timely submit the information to FICC. Therefore, FICC believes the receipt of 40 or more notifications by any one repo broker should also be a trigger for a high volume day.

The proposed rule change is consistent with Section 17A of the Act[6] and the rules and regulations thereunder because it is designed to promote the prompt and accurate clearance and settlement of securities transactions by setting forth more practical and less burdensome operating standards for the repo service.

(B) Self-Regulatory Organization's Statement on Burden on Competition

FICC does not believe that the proposed rule change will have any impact or impose any burden on competition.

(C) Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received From Members, Participants or Others

Written comments relating to the proposed rule change have not yet been solicited or received. FICC will notify the Commission of any written comments received by FICC.

III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action

FICC has filed the proposed rule change pursuant to Section 19(b)(3)(A) of the Act[7] and subparagraph (f)(6) of Rule 19b–4 thereunder.[8] Because the foregoing proposed rule change (1) does not significantly affect the protection of investors or the public interest, (2) does not impose any significant burden on competition, and (3) does not become operative for 30 days from the date of filing, or such shorter time as the Commission may designate if consistent with the protection of investors and the public interest, the proposed rule change has become effective pursuant to Section 19(b)(3)(A) of the Act and Rule 19b–4(f)(6) thereunder.

Rule 19b–4(f)(6)(iii) also requires a self-regulatory organization to provide the Commission with written notice of its intent to file a proposed rule change pursuant to Rule 19b-4(f)(6) along with a brief description and text of the proposed rule change at least five business days prior to filing the proposed rule change, or such shorter time as the Commission designates. FICC complied with this requirement.

A proposed rule change filed under Rule 19b–4(f)(6) normally does not become operative prior to 30 days after the date of filing. However, Rule 19b–4(f)(6)(iii) permits the Commission to designate a shorter time if such action is consistent with the protection of investors and the public interest. The Commission is waiving the 30-day operative delay to allow FICC and its members to immediately benefit from the rule change. The Commission believes that waiver of the 30-day operative delay is consistent with the protection of investors and the public interest.[9]

At any time within 60 days of the filing of such proposed rule change, the Commission may summarily abrogate such rule change if it appears to the Commission that such action is necessary or appropriate in the public interest, for the protection of investors, or otherwise in furtherance of the purposes of the Act.

IV. Solicitation of Comments

Interested persons are invited to submit written data, views, and arguments concerning the foregoing, including whether the proposed rule change is consistent with the Act. Comments may be submitted by any of the following methods:

Electronic comments

- Use the Commission's Internet comment form (*http://www.sec.gov/rules/sro.shtml*) or
- Send an e-mail to *rule-comments@sec.gov.* Please include File Number SR–FICC–2004–12 on the subject line.

Paper comments

- Send paper comments in triplicate to Jonathan G. Katz, Secretary, Securities and Exchange Commission, 450 Fifth Street, NW., Washington, DC 20549–0609.

All submissions should refer to File Number SR–FICC–2004–12. This file number should be included on the subject line if e-mail is used. To help the Commission process and review your comments more efficiently, please use only one method. The Commission will post all comments on the Commission's Internet Web site (*http://www.sec.gov/rules/sro.shtml*). Copies of the submission, all subsequent amendments, all written statements with respect to the proposed rule change that are filed with the Commission, and all written communications relating to the proposed rule change between the Commission and any person, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. 552, will be available for inspection and copying in the Commission's Public Reference Section, 450 Fifth Street, NW., Washington, DC 20549. Copies of such filing also will be available for inspection and copying at the principal office of FICC and on FICC's Web site at *http://www.ficc.com.* All comments received will be posted without change; the Commission does not edit personal identifying information from submissions. You should submit only information that you wish to make available publicly. All submissions should refer to File Number SR–FICC–2004–12 and should be submitted on or before August 5, 2004.

For the Commission by the Division of Market Regulation, pursuant to delegated authority.[10]

Margaret H. McFarland,

Deputy Secretary.

[FR Doc. 04–16050 Filed 7–14–04; 8:45 am]

BILLING CODE 8010–01–P

[6] 15 U.S.C. 78q–1.

[7] 15 U.S.C. 78s(b)(3)(A).

[8] 17 CFR 240.19b–4(f)(6).

[9] For purposes only of accelerating the operative date of this proposal, the Commission has considered the proposed rule's impact on efficiency, competition, and capital formation. 15 U.S.C. 78c(f).

[10] 17 CFR 200.30–3(a)(12).

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–49988; File No. SR–NYSE–2004–07]

Self-Regulatory Organizations; New York Stock Exchange, Inc.; Order Granting Approval to Proposed Rule Change and Amendment No. 1 Thereto Relating to the Listed Company Manual's Requirement That Companies Make Certain Paper Filings

July 8, 2004.

On February 10, 2004, the New York Stock Exchange, Inc. (''NYSE'' or ''Exchange'') filed with the Securities and Exchange Commission (''Commission'' or ''SEC''), pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 (''Act'')[1] and Rule 19b–4 thereunder,[2] a proposed rule change to amend the NYSE *Listed Company Manual* to clarify that the Exchange will no longer require issuers to submit hard copies of Commission

[1] 15 U.S.C. 78s(b)(1).

[2] 17 CFR 240.19b–4.

Form 8–K [3] filings. Accordingly, the NYSE proposes only to require issuers to file, pursuant to the NYSE *Listed Company Manual*, hard copies of materials that are necessary to support a listing application and proxy materials. In addition, the NYSE proposes to amend the NYSE *Listed Company Manual* to require issuers to file paper versions of SEC Form 6–K [4] that are not required to be filed through the Commission's Electronic Data Gathering, Analysis, and Retrieval (''EDGAR'') system. On May 10, 2004, NYSE submitted Amendment No. 1 to the proposed rule change.[5]

The proposed rule change, as amended, was published for comment in the **Federal Register** on May 24, 2004.[6] The Commission received no comments on the proposal.

The Commission finds that the proposed rule change is consistent with the requirements of the Act and the rules and regulations thereunder applicable to a national securities exchange,[7] and, in particular, the requirements of Section 6 of the Act [8] and the rules and regulations thereunder. The Commission finds specifically that the proposed rule change is consistent with Section 6(b)(5) of the Act [9] in that the proposal is designed to prevent fraudulent and manipulative acts and practices, to promote just and equitable principles of trade, to remove impediments to and perfect the mechanism of a free and open market and a national market system, and, in general, to protect investors and the public interest.

The Commission believes that the proposal should streamline filing requirements and eliminate duplicative filings. The Commission notes that the Exchange currently accepts and accesses all materials filed by issuers with the Commission on the Commission's EDGAR system except materials necessary to support a listing application, proxy materials, and SEC Form 8–K [10] filings.[11] Since the Exchange currently accepts and accesses other materials filed by issuers on the EDGAR system and has recently implemented a system that provides electronic notification that an issuer has filed a Form 8–K [12] or Form 6–K [13] and flags and routes such filings to the appropriate NYSE representative, the Commission believes the Exchange will be able to continue to fulfill its regulatory responsibilities with regard to its issuers.

It is therefore ordered, pursuant to Section 19(b)(2) of the Act,[14] that the proposed rule change (File No. SR–NYSE–2004–07), as amended, be, and hereby is, approved.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.[15]

Margaret H. McFarland,

Deputy Secretary.

[FR Doc. 04–16047 Filed 7–14–04; 8:45 am]

BILLING CODE 8010–01–P

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–49987; File No. SR–OCC–2004–07]

Self-Regulatory Organizations; The Options Clearing Corporation; Notice of Filing and Immediate Effectiveness of a Proposed Rule Change Relating To Settlements of Exercises and Assignments of Foreign Currency Options

July 8, 2004.

Pursuant to section 19(b)(1) of the Securities Exchange Act of 1934 (''Act''),[1] notice is hereby given that on May 10, 2004, The Options Clearing Corporation (''OCC'') filed with the Securities and Exchange Commission (''Commission'') the proposed rule change as described in Items I, II, and III below, which items have been prepared primarily by OCC. The Commission is publishing this notice to solicit comments on the proposed rule change from interested persons.

I. Self-Regulatory Organization's Statement of the Terms of Substance of the Proposed Rule Change

The proposed rule change updates OCC's By-laws and Rules pertaining to the settlement of exercised foreign currency options in anticipation of the installation of the portion of OCC's new ENCORE clearing system that will process those settlements.

II. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

In its filing with the Commission, OCC included statements concerning the purpose of and basis for the proposed rule change and discussed any comments it received on the proposed rule change. The text of these statements may be examined at the places specified in Item IV below. OCC has prepared summaries, set forth in sections (A), (B), and (C) below, of the most significant aspects of such statements.[2]

(A) Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

The purpose of the proposed rule change is to update OCC's By-laws and Rules pertaining to the settlement of exercised foreign currency options in anticipation of the installation of the portion of OCC's new ENCORE clearing system that will process those settlements. This installation, which was scheduled for May 7, 2004, will convert existing processing to the ENCORE technology with only a few variations. Nevertheless, OCC wishes to take this occasion to update its Rules by eliminating details that now seems more appropriately included in operational procedures than in its rulebook and by making a few other changes, as described below, that are appropriate to reflect experience that OCC has gained and certain developments that have occurred since OCC's Rules were initially adopted. These amendments are equally applicable before and after the planned conversion to the ENCORE system. The specific changes are described below.

Overview of Exercise Settlement Process for Foreign Currency Options

As set forth in Rules 1605, 1606, and 1606A, the gross settlement obligations for all accounts are netted down to a single amount for each currency pair following the assignment of exercise notices with respect to foreign currency options for all accounts within a particular clearing number. Netting occurs within a currency pair so that an obligation to deliver a specific foreign currency against the receipt of U.S.

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[3] 17 CFR 249.308.

[4] 17 CFR 249.306.

[5] *See* Letter from Darla C. Stuckey, Corporate Secretary, NYSE, to Nancy J. Sanow, Assistant Director, Division of Market Regulation (''Division''), Commission, dated May 7, 2004 (''Amendment No. 1''). Amendment No. 1 replaced and superceded the original filing in its entirety.

[6] *See* Securities Exchange Act Release No. 49714 (May 17, 2004), 69 FR 29608.

[7] In approving this proposed rule change, the Commission has considered the proposed rule's impact on efficiency, competition, and capital formation. 15 U.S.C. 78c(f).

[8] 15 U.S.C. 78f.

[9] 15 U.S.C. 78f(b)(5).

[10] 17 CFR 249.308.

[11] *See* NYSE Listed Company Manual, Section 204.00(B); *see also* Letter to NYSE from Ann M. Krauskopf, Special Counsel, Division of Corporation Finance, and Howard L. Kramer, Senior Associate Director, Division, Commission, dated July 22, 1998 (providing no-action relief from certain requirements to file paper copies).

[12] 17 CFR 249.308.

[13] 17 CFR 249.306.

[14] 15 U.S.C. 78s(b)(2).

[15] 17 CFR 200.30–3(a)(12).

[1] 15 U.S.C. 78s(b)(1).

[2] The Commission has modified parts of these statements.

dollars will be netted against an obligation to receive that same foreign currency against payment of U.S. dollars. In the event that two or more settlements arising from different exercise/assignment dates for a currency pair will settle on the same date, those settlements will also be netted. If such processing nets out all settlement obligations for a currency, then such obligations are deemed discharged. To the extent a settlement obligation remains, OCC makes available to settling clearing members a report showing their projected settlements. Settlement obligations arising from multiple clearing numbers controlled by the same clearing member are not netted against each other.

In response to the projected settlement report, clearing members may submit instructions designating obligations to be settled on a deliver versus payment (''DVP'') basis. A clearing member may instruct OCC that it will settle all or, subject to certain constraints imposed by OCC's procedures, any part of the gross obligation on a DVP basis and any remaining net settlement may also be settled on a DVP basis. After the close of the DVP window, OCC recalculates the remaining net currency pairs, eliminating deliveries and payments to be settled under the submitted DVP instructions. If DVP instructions were not submitted for the entire remainder, those remaining net obligations will settle on a regular way basis. Final settlement obligations, identifying the applicable settlement method, are then made available to clearing members and reported to their banks.

Two business days before settlement date, OCC debits the settling clearing members' bank accounts for U.S. dollar obligations settling on a regular way basis. The debited amount is held until settlement date. On settlement date, if a settling clearing member with a collect in U.S. dollars had not opposite foreign currency obligation, the U.S. dollar collect will be released during regular morning settlements. If the settling clearing member did have a foreign currency deliver obligation, OCC will make the corresponding U.S. dollar settlement upon receiving confirmation from OCC's bank that the clearing member has satisfied its settlement obligations. If OCC receives a partial delivery of a foreign currency, the deficiency is treated as unsettled and only a portion of the U.S. dollars being held will be released to the collecting clearing member. OCC will issue new regular way settlement information for the unsettled foreign currency obligation.

As provided in Rule 1606(c) and Interpretation .01 following Rule 1606, in the case of certain currencies OCC (or OCC's bank) requires that a clearing member must obtain an advance guarantee from its bank that the bank will deliver the currency on the exercise settlement date. This requirement is imposed for those currencies for which delivery is likely to be delayed in the absence of such guarantees as determined by OCC's bank through its experience in the currency markets. For those currencies for which a guarantee is required, the clearing member must both provide a bank guarantee of the settlement and then make actual settlement in order to discharge its obligations. In the case of DVP settlements, the clearing member's bank advises OCC whether it has accepted or rejected the DVP instructions. If rejected, OCC's acceptance of the DVP instruction is revoked and the settlement obligation will be processed as a regular way settlement. Obligations settling on a DVP basis are settled on the exercise settlement date.

Description of the Specific Rule Changes

The principal changes are to Rules 1605, 1606, and 1606A of chapter XVI. These rules have been substantially redrafted, and accordingly, the former rules are deleted in their entirety. The revised rules essentially set forth the settlement process described above. The revised rules also eliminate references to The Intermarket Clearing Corporation (''ICC''), which has been merged into OCC.

Rule 1604(b) is being amended to grant authority to the Chairman, Management Vice Chairman, President, and any delegate of such officers the authority to advance or postpone the settlement date for exercises of foreign currency options because it may be impractical or impossible to convene a Board meeting in time to address unusual conditions as action is typically required on the day the conditions arise. The Board's delegation increases OCC's flexibility to respond to unexpected or unusual events affecting the exercises settlement date for foreign currency options. While OCC has not experienced any unusual events relating to the settlement of foreign currency obligations, management believes that it is important the OCC have a level of flexibility in order to immediately respond to unusual conditions that may make it necessary to change a settlement date for foreign currency obligations. A similar change to Rule 902, Obligations to Deliver, was made in 2002 to give these same officers authority to extend or postpone a settlement date for exercises of equity option.[3]

Certain nonsubstantive, conforming changes are made elsewhere in the rules. Amendments to Rule 602(f)(2) of chapter VI, Rule 1107 of chapter XI, and Rule 1602 of chapter XVI were necessary to correct references to Rule 1605 and to conform terminology to the defined terms contained in the other revised rules.

OCC believes that the proposed changes to its rules are consistent with the purpose and requirements of section 17A of the Securities and Exchange Act of 1934, as amended, because such changes are designed to promote the prompt and accurate clearance and settlement of transactions in and exercises of foreign currency options and to assure safeguarding of securities and funds in the custody and control of OCC.

(B) Self-Regulatory Organization's Statement on Burden on Competition

OCC does not believe that the proposed rule change would impose any burden on competition.

(C) Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received From Members, Participants, or Others

Written comments were not and are not intended to be solicited with respect to the proposed rule change, and none have been received.

III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action

The foregoing rule change has become effective pursuant to section 19(b)(3)(A)(iii) of the Act[4] and Rule 19b–4(f)(4)[5] promulgated thereunder because the proposal effects a change in an existing service of OCC that (A) does not adversely affect the safeguarding of securities or funds in the custody or control of OCC or for which it is responsible and (B) does not significantly affect the respective rights or obligations of OCC or persons using the service. At any time within sixty days of the filing of the Proposed rule change, the Commission may summarily abrogate such rule change if it appears to the Commission that such action is necessary or appropriate in the public interest, for the protection of investors, or otherwise in furtherance of the purposes of the Act.

[3] Securities Exchange Act Release No. 47629 (April 3, 2003), 68 FR 17715 (April 10, 2003) [File No. SR–OOC–2002–21].

[4] 15 U.S.C. 78s(b)(3)(A)(iii).

[5] 17 CFR 240.19b–4(f)(4).

IV. Solicitation of Comments

Interested persons are invited to submit written data, views, and arguments concerning the foregoing, including whether the proposed rule change is consistent with the Act. Comments may be submitted by any of the following methods:

Electronic Comments

- Use the Commission's Internet comment form (*http://www.sec.gov/rules/sro.shtml*) or
- Send an e-mail to *rule-comments@sec.gov*. Please include File Number SR–OCC–2004–07 on the subject line.

Paper Comments

- Send paper comments in triplicate to Johathan G. Katz, Secretary, Securities and Exchange Commission, 450 Fifth Street, NW., Washington, DC 20549–0609.

All submissions should refer to File Number SR–OCC–2004–07. This file number should be included on the subject line if e-mail is used. To help the Commission process and review your comments more efficiently, please use only one method. The Commission will post all comments on the Commission's Internet Web site (*http://www.sec.gov/rules/sro.shtml*). Copies of the submission, all subsequent amendments, all written statements with respect to the proposed rule change that are filed with the Commission, and all written communications relating to the proposed rule change between the Commission and any person, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. 552, will be available for inspection and copying in the Commission's Public Reference Section, 450 Fifth Street, NW., Washington, DC 20549. Copies of such filing also will be available for inspection and copying at the principal office of OCC and on OCC's Web site at *http://www.optionsclearing.com*. All comments received will be posted without change; the Commission does not edit personal identifying information from submissions. You should submit only information that you wish to make available publicly. All submissions should refer to File Number SR–OCC–2004–07 and should be submitted on or before August 5, 2004.

For the Commission by the Division of Market Regulation, pursuant to delegated authority.[6]

Margaret H. McFarland,

Deputy Secretary.

[FR Doc. 04–16051 Filed 7–14–04; 8:45 am]

BILLING CODE 8010–01–M

DEPARTMENT OF STATE

[Public Notice 4743]

Announcement of Meetings of the International Telecommunication Advisory Committee

Summary: The International Telecommunication Advisory Committee will meet in July, August, and September to prepare for meetings of CITEL PCC.I and ITU–D Study Groups 1 and 2. Members of the public will be admitted to the extent that seating is available, and may join in the discussions, subject to the instructions of the Chair.

The International Telecommunication Advisory Committee (ITAC) will meet on Wednesday, July 28, 2004, 2–4 p.m., at the offices of Verizon Communications, 1300 Eye Street, Washington, DC, to prepare for the August meeting of CITEL Permanent Consultative Committee I (Telecommunication Standardization). A conference bridge will be provided courtesy of Verizon. A detailed agenda will be published on the email *reflector pcci-citel@eblist.state.gov*. People desiring to attend the meeting who are not on this list may request the information from the Secretariat at *minardje@state.gov*.

The International Telecommunication Advisory Committee (ITAC) will meet on Wednesday, July 28, Wednesday August 4, and Wednesday September 1, 2–4 p.m., to prepare for meetings of ITU–D Study Groups 1 and 2. All three meetings will be at the Department of State, Room 2533A, 2201 C Street, Washington, DC. There will be no conference bridge. Entrance to the Department of State is controlled; people intending to attend a meeting at the Department of State should send their clearance data by fax to (202) 647–7407 or e-mail to *mccorklend@state.gov* not later than 24 hours before the meeting. Please include the name of the meeting, your name, social security number, date of birth and organizational affiliation. One of the following valid photo identifications will be required for admittance: U.S. driver's license with your picture on it, U.S. passport, or U.S. Government identification. Directions to the meeting location may be obtained by calling the ITAC Secretariat at 202 647–2592 or e-mail to *mccorklend@state.gov*.

Dated: July 9, 2004.

Marian R. Gordon,

Director, Telecommunication & Information Standardization, EB/CIP/MA Department of State.

[FR Doc. 04–16082 Filed 7–14–04; 8:45 am]

BILLING CODE 4710–45–P

OFFICE OF THE UNITED STATES TRADE REPRESENTATIVE

Notice of Effective Date

AGENCY: Office of the United States Trade Representative.

ACTION: Notice of effective date for goods of Mexico for certain modifications of the NAFTA Rules of Origin.

SUMMARY: In Proclamation 7641 of January 17, 2003, the President modified the rules of origin under the North American Free Trade Agreement (the ''NAFTA'') incorporated in the Harmonized Tariff Schedule of the United States (the ''HTS''). The modifications were made effective with respect to goods of Canada that are entered, or withdrawn from warehouse for consumption, on or after January 1, 2003. The proclamation stated that the modifications with respect to goods of Mexico would be effective on or after a date to be announced in the **Federal Register** by the USTR. The purpose of this notice is to announce that the effective date for the modifications for goods of Mexico is July 15, 2004. The changes were printed in the **Federal Register** of January 23, 2003, Volume 68, Number 15, pages 3163–3167 and are reflected in the HTS for 2004.

FOR FURTHER INFORMATION CONTACT: For further information, please contact Kent Shigetomi, USTR, (202) 395–3412, or *kent_shigetomi@ustr.eop.gov*.

SUPPLEMENTARY INFORMATION:

Presidential Proclamation 6641 of December 15, 1993 implemented the North American Free Trade Agreement (the ''NAFTA'') with respect to the United States and, pursuant to the North American Free Trade Agreement Implementation Act (the ''NAFTA Implementation Act''), incorporated in the Harmonized Tariff Schedule of the United States (the ''HTS'') the tariff modifications and rules of origin necessary or appropriate to carry out the NAFTA. Section 202 of the NAFTA Implementation Act provides rules for

[6] 17 CFR 200.30–3(a)(12).

determining whether goods imported into the United States originate in the territory of a NAFTA party and thus are eligible for the tariff and other treatment contemplated under the NAFTA. Section 202(q) of the NAFTA Implementation Act (19 U.S.C. 3332(q)) authorizes the President to proclaim, as a part of the HTS, the rules of origin set out in the NAFTA and to proclaim modifications to such previously proclaimed rules of origin, subject to the consultation and layover requirements of section 103(a) of the NAFTA Implementation Act (19 U.S.C. 3313(a)).

The President determined that the modifications to the HTS contained in Proclamation 7641 pursuant to sections 201 and 202 of the NAFTA Implementation Act, were appropriate and proclaimed such changes with respect to goods of Canada on January 17, 2003. The modifications were made effective with respect to goods of Canada that are entered, or withdrawn from warehouse for consumption, on or after January 1, 2003. For goods of Mexico, the President decided that the effective date of the modifications shall be determined by the United States Trade Representative (USTR).

On April 29, 2004, the government of Mexico obtained the necessary authorization to implement the rule of origin changes with respect to qualifying goods entering from the United States. Subsequently, officials from the government of Mexico and the government of the United States agreed to implement these changes with respect to each other's eligible goods, effective July 15, 2004.

Regina K. Vargo,

Assistant U.S. Trade Representative, Office of the Americas.

[FR Doc. 04–16021 Filed 7–14–04; 8:45 am]

BILLING CODE 3190–W4–P

OFFICE OF THE UNITED STATES TRADE REPRESENTATIVE

WTO Dispute Settlement Proceeding Regarding the United States International Trade Commission Final Determination of Material Injury in the Investigation Concerning Hard Red Spring Wheat From Canada

AGENCY: Office of the United States Trade Representative.

ACTION: Notice; request for comments.

SUMMARY: The Office of the United States Trade Representative (''USTR'') is providing notice that the Government of Canada has requested establishment of a dispute settlement panel to examine the United States International Trade Commission (''ITC'') final determination of material injury with respect to red hard spring wheat from Canada. The panel request alleges that the ITC's determination is inconsistent with Article VI of the General Agreement on Tariffs and Trade 1994 (''GATT 1994'') and various provisions of the Agreement on Implementation of Article VI of GATT 1994 (''Anti-Dumping Agreement'') and the Agreement on Subsidies and Countervailing Measures (''SCM Agreement''). USTR invites written comments from the public concerning the issues raised in this dispute.

DATES: Although USTR will accept any comments received during the course of the dispute settlement proceedings, comments should be submitted on or before September 15, 2004 to be assured of timely consideration by USTR.

ADDRESSES: Comments should be submitted (i) electronically, to *FR0434@ustr.gov*, Attn: ''Canada Wheat Injury (DS310)'' in the subject line, or (ii) by fax, to Sandy McKinzy at 202–395–3640, with a confirmation copy sent electronically to the e-mail address above.

FOR FURTHER INFORMATION CONTACT: Mikhail S. Zeldovich, Assistant General Counsel, Office of the United States Trade Representative, 600 17th Street, NW., Washington, DC 20508, (202) 395–3150.

SUPPLEMENTARY INFORMATION: Section 127(b) of the Uruguay Round Agreements Act (''URAA'') (19 U.S.C. 3537(b)(1)) requires that notice and opportunity for comment be provided after the United States submits or receives a request for the establishment of a WTO dispute settlement panel. If a dispute settlement panel is established pursuant to the WTO Dispute Settlement Understanding (DSU), such panel, which would hold its meetings in Geneva, Switzerland, would be expected to issue a report on its findings and recommendations within six to nine months after it is established.

Major Issues Raised and Legal Basis of the Complaint

In its determination of October 3, 2003, published in the **Federal Register** on October 23, 2002, the ITC found that imports of red hard spring wheat from Canada, which the U.S. Department of Commerce found to be subsidized and sold at less than fair value, caused material injury to an industry in the United States. The reasons for the ITC's determination are set forth in USITC Publication No. 3639 (October 2003).

On June 11, 2004, Canada submitted a request that a dispute settlement panel be established regarding the ITC's determination. That request may found at www.wto.org contained in a document designated as WT/DS310/2.

In its request, Canada alleges that the United States has violated Article VI:6(a) of the GATT 1994, Articles 1, 3, and 18.1 of the Anti-Dumping Agreement, and Articles 10, 15, 19.1, and 32.1 of the SCM Agreement. Canada alleges that these violations stem from certain errors in the ITC's determination. In particular, Canada claims that the United States:

(i) ''Violated Article 3.1 of the Anti-Dumping Agreement and Article 15.1 of the SCM Agreement by * * * failing to conduct an objective examination of both (a) the volume of the dumped and subsidized imports and the effect of those imports on prices in the domestic market for like products, and (b) the consequent impact of those imports on domestic producers of such products;''

(ii) ''violated Article 3.2 of the Anti-Dumping Agreement and Article 15.2 of the SCM Agreement by failing to properly consider the effect of the dumped and subsidized imports on prices, including whether there had been a significant price undercutting by the dumped and subsidized imports and whether the effect of those imports was otherwise to depress prices to a significant degree;''

(iii) ''violated Article 3.4 of the Anti-Dumping Agreement and Article 15.4 of the SCM Agreement by failing to properly examine the impact of the dumped and subsidized imports on the domestic industry concerned;''

(iv) ''violated Article 3.5 of the Anti-Dumping Agreement and Article 15.5 of the SCM Agreement'' by ''failing to demonstrate a causal relationship between the dumped and subsidized imports and the injury to the domestic industry'' and ''failing to examine known factors other than the dumped and subsidized imports which were injuring the domestic industry and further failing to ensure that the injuries caused by these other factors were not attributed to the dumped and subsidized imports;''

(v) ''{i}n making a final determination of injury * * * violated Articles 1 and 18.1 of the Anti-Dumping Agreement, Articles 10, 19.1, and 32.1 of the SCM Agreement and Article VI:6(a) of the GATT 1994.''

Public Comment: Requirements for Submissions

Interested persons are invited to submit written comments concerning the issues raised in this dispute. Persons submitting comments may either send one copy by fax to Sandy McKinzy at (202) 395–3640, or transmit a copy electronically to *FR0434@ustr.gov*, with ''Canada Wheat Injury (DS310)'' in the subject line. For documents sent by fax, USTR requests that the submitter provide a confirmation copy to the electronic mail address listed above.

USTR encourages the submission of documents in Adobe PDF format, as attachments to an electronic mail. Interested persons who make submissions by electronic mail should not provide separate cover letters; information that might appear in a cover letter should be included in the submission itself. Similarly, to the extent possible, any attachments to the submission should be included in the same file as the submission itself, and not as separate files.

A person requesting that information contained in a comment submitted by that person be treated as confidential business information must certify that such information is business confidential and would not customarily be released to the public by the submitter. Confidential business information must be clearly designated as such and the submission must be marked ''Business Confidential'' at the top and bottom of the cover page and each succeeding page of the submission.

Information or advice contained in a comment submitted, other than business confidential information, may be determined by USTR to be confidential in accordance with section 135(g)(2) of the Trade Act of 1974 (19 U.S.C. 2155(g)(2)). If the submitting person believes that information or advice may qualify as such, the submitting person—

(1) Must clearly so designate the information or advice;

(2) Must clearly mark the material as ''Submited in Confidence'' at the top and bottom of each page of the cover page and each succeeding page; and

(3) Is encouraged to provide a non-confidential summary of the information or advice.

Pursuant to section 127(e) of the URAA (19 U.S.C. 3537(e)), USTR will maintain a file on this dispute settlement proceeding, accessible to the public, in the USTR Reading Room, which is located at 1724 F Street, NW., Washington, DC 20508. The public file will include non-confidential comments received by USTR from the public with respect to the dispute; if a dispute settlement panel is convened, the U.S. submissions to that panel, the submissions, or non-confidential summaries of submissions, to the panel received from other participants in the dispute, as well as the report of the panel; and, if applicable, the report of the Appellate Body. An appointment to review the public file (Docket No. WT/DS–310, Canada Wheat Injury Dispute may be made by calling the USTR Reading Room at (202) 395–6186. The USTR Reading Room is open to the public from 9:30 a.m. to noon and 1 p.m. to 4 p.m., Monday through Friday.

Daniel E. Brinza,

Assistant United States Trade Representative for Monitoring and Enforcement.

[FR Doc. 04–16022 Filed 7–14–04; 8:45 am]

BILLING CODE 3190–W4–P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

Proposed Advisory Circular (AC) 20–FIS–B, Safety and Interoperability Requirements for Initial Domestic Flight Information Service-Broadcast

AGENCY: Federal Aviation Administration (DOT).

ACTION: Notice of availability and request for public comment.

SUMMARY: This notice announces the availability of and requests comments on a proposed Advisory Circular (AC) 20–FIS, Safety and Interoperability Requirements for Initial Domestic Flight Information Service-Broadcast (FIS–B). This proposed AC supports the use of Flight Information Service-Broadcast weather and other aeronautical data link products for enhance situational awareness. In it, we (1) describe a standardized way to identify the data communications operations environment, (2) how to execute an operational hazard assessment, and (3) allocate resulting safety and interoperability requirements for installing FIS–B equipment.

DATES: Comments must be received on or before August 9, 2004.

ADDRESSES: Send all comments on the proposed AC to: Federal Aviation Administration (FAA), Aircraft Certification Service, Aircraft engineering Division, Avionic Systems Branch, AIR–130, 800 Independence Avenue, SW., Washington, DC 20591. Attn: Mr. Kevin Mattison. Or deliver comments to: Federal Aviation Administration, Room 815, 800 Independence Avenue, SW., Washington, DC 20591.

FOR FURTHER INFORMATION CONTACT: Mr. Kevin Mattison, AIR–130, Room 815, Federal Aviation Administration, Aircraft Certification Service, Aircraft Engineering Division, 800 Independence Avenue, SW., Washington, DC 20591. Telephone (202) 385–4636, FAX: (202) 385–4651. Or, via e-mail at: *Kevin.mattison@faa.gov.*

SUPPLEMENTARY INFORMATION:

Comments Invited

Interested persons are invited to comment on the proposed AC listed in this notice by submitting such written data, views, or arguments as they desire to the above specified address. Comments received on the proposed AC may be examined, before and after the comment closing date, in Room 815, FAA Headquarters Building 800 Independence Avenue, SW., Washington, DC 20591, weekdays except Federal holidays, between 8:30 a.m. and 4:30 p.m. All communications received on or before the closing date will be considered by the Director of the Aircraft Certification Service before issuing the final Advisory Circular.

Background

For many years, the Aircraft Communication Addressing and Reporting (ACARS) has given aircraft operators a means of digitally up-linking weather and National Airspace System (NAS) status information for display in text format. The FAA's goal for FIS in the cockpit is to use digital data link to deliver information to the pilot, and in so doing, improve safety, reduce costs to users and the FAA, and increase the utility, efficiency, and capacity of the NAS. Timely delivery or high quality, accurate, and consistent information is essential for sound operational decisions by pilots, controllers, and dispatchers. As such, the objective of this proposed AC is to give pilots strategic information to help with their in-flight planning before arriving or departing the terminal area.

How To Obtain Copies

You may get a copy of the proposed AC from the Internet at: *http://www.airweb.faa.gov/rgl.* Once on the RGL Web site, select ''Advisory Circular'', then select the document by number. See section entitled **FOR FURTHER INFORMATION CONTACT** for the complete address if requesting a copy by mail.

Susan J.M. Cabler,

Assistant Manager, Aircraft Engineering Division, Aircraft Certification Service.

[FR Doc. 04–16106 Filed 7–14–04; 8:45 am]

BILLING CODE 4910–13–M

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

Noise Exposure Map Notice: Hartsfield-Jackson Atlanta International Airport

AGENCY: Federal Aviation Administration, DOT.

ACTION: Notice.

SUMMARY: The Federal Aviation Administration (FAA) announces its determination that the noise exposure maps submitted by the City of Atlanta for Hartsfield-Jackson Atlanta International Airport (HJAIA) under the provisions of 49 U.S.C. 47501 *et seq.,* (Aviation Safety and Noise Abatement Act) and 14 CFR Part 150 are in compliance with applicable requirements.

EFFECTIVE DATE: The effective date of the FAA's determination on the noise exposure maps is June 22, 2004.

FOR FURTHER INFORMATION CONTACT: Parks Preston, Federal Aviation Administration, Atlanta Airports District Office, 1701 Columbia Ave., Campus Bldg., Suite 2–260, College Park, GA 30337, 404–305–7149.

SUPPLEMENTARY INFORMATION: This notice announces that the FAA finds that the noise exposure maps submitted for HJAIA are in compliance with applicable requirements of Part 150, effective June 22, 2004. Under 49 U.S.C. section 47503 of the Aviation Safety and Noise Abatement Act (hereinafter referred to as ''the Act''), an airport operator may submit to the FAA noise exposure maps which meet applicable regulations and which depict non-compatible land uses as of the date of submission of such maps, a description of projected aircraft operations, and the ways in which such operations will affect such maps. The Act requires such maps to be developed in consultation with interested and affected parties in the local community, government agencies, and persons using the airport. An airport operator who has submitted noise exposure maps that are found by FAA to be in compliance with the requirements of Federal Aviation Regulations (FAR) Part 150, promulgated pursuant to the Act, may submit a noise compatibility program for FAA approval which sets forth the measures the operator has taken or proposes to take to reduce existing non-compatible uses and prevent the introduction of additional non-compatible uses.

The FAA has completed its review of the noise exposure maps and accompanying documentation submitted by the HJAIA. The documentation that constitutes the ''noise exposure maps'' as defined in section 150.7 of Part 150 includes the NEM graphics that depict the 2003 and 2008 noise contours, and supporting documentation required by sections 150.21 and A150.101. The supporting documentation consists of:

1. Runway locations, airport boundaries, noise contours of Ldn. 65, 70, and 75 dB, and noncompatible land uses within the noise contours (Figures 3–8 and 4–4).
2. Flight tracks (Section 3.5 and 4.5, Figures 3–2 to 3–5 and 4–2 to 4–3).
3. Location of noise sensitive public buildings (such as schools, hospitals, and health care facilities), and properties on or eligible for inclusion in the National Register of Historic Places (Figures 3–8 and 4–4).
4. Locations of noise monitoring sites (Figure A.1).
5. Estimates of the number of people residing within the Ldn 65, 70, and 75 dB contours (Sections 3.9 and 4.9).
6. Operational information and fleet mix (Tables 3.3 and 4.2, Figure 4.1).
7. Consultation (Appendix B).

The FAA has determined that these noise exposure maps and accompanying documentation are in compliance with applicable requirements. This determination is effective on June 22, 2004.

FAA's determination on an airport operator's noise exposure maps is limited to a finding that the maps were developed in accordance with the procedures contained in appendix A of FAR Part 150. Such determination does not constitute approval of the applicant's data, information or plans, or a commitment to approve a noise compatibility program or to fund the implementation of that program. If questions arise concerning the precise relationship of specific properties to noise exposure contours depicted on a noise exposure map submitted under section 47503 of the Act, it should be noted that the FAA is not involved in any way in determining the relative locations of specific properties with regard to the depicted noise contours, or in interpreting the noise exposure maps to resolve questions concerning, for example, which properties should be covered by the provisions of section 47506 of the Act. These functions are inseparable from the ultimate land use control and planning responsibilities of local government. These local responsibilities are not changed in any way under Part 150 or through FAA's review of noise exposure maps. Therefore, the responsibility for the detailed overlaying of noise exposure contours onto the map depicting properties on the surface rests exclusively with the airport operator that submitted those maps, or with those public agencies and planning agencies with which consultation is required under section 47503 of the Act. The FAA has relied on the certification by the airport operator, under section 150.21 of FAR Part 150, that the statutorily required consultation has been accomplished.

Copies of the full noise exposure map documentation and of the FAA's evaluation of the maps are available for examination at the following locations: Federal Aviation Administration, Atlanta Airports District Office, 1701 Columbia Ave., Campus Bldg., Suite 2–260, College Park, GA, and Hartsfield-Jackson Atlanta International Airport, 600 N. Terminal Parkway, Atlanta, GA. Questions may be directed to the individual named above under the heading **FOR FURTHER INFORMATION CONTACT.**

Issued in College Park, Georgia on June 22, 2004.

Scott L. Seritt,

Manager, Atlanta Airports District Office.

[FR Doc. 04–16103 Filed 7–14–04; 8:45 am]

BILLING CODE 4910–13–M

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

Environmental Impact Statement: Sitka Rocky Gutierrez Airport, Sitka, AK

AGENCY: Federal Aviation Administration (FAA) DOT.

ACTION: Supplement notice of intent.

SUMMARY: The Federal Aviation Administration announces that it will prepare an Environmental Impact Statement (EIS) for implementation of actions proposed at the Sitka Rocky Gutierrez Airport. Public and Agency Scoping Meetings will be conducted for the Federal Aviation Administration to receive comments regarding the preparation of the EIS.

Responsible Official: Patricia A. Sullivan, Environmental Specialist, Federal Aviation Administration, Alaskan Region, Airports Division, 222 W. 7th Avenue, #14, Anchorage, AK 99513–7587.

FOR FURTHER INFORMATION CONTACT: Ryk Dunkelberg, Project Manager, Barnard Dunkelberg & Company, Cherry Street Building, 1616 East Fifteenth Street, Tulsa, Oklahoma 74120, Phone: 918/585–8844, e-mail: *sitkaeis@bd-c.com.*

To Submit Written Comments, Send To: Assistant Project Manager, Barnard Dunkelberg & Company, 1430 Larimer Square, Suite 203, Denver, Colorado 80202, Phone: 303/825–8844; e-mail: *sitkaeis@bd-c.com.*

SUPPLEMENTARY INFORMATION: The Federal Aviation Administration published a Notice of Intent on December 12, 2002, to prepare an EIS for implementation of proposed actions

at the Sitka Rocky Gutierrez Airport. The revised list of major actions proposed to be assessed in the EIS include improvements to the Runway Safety Area; installation of an Approach Light System; construction of a parallel taxiway; construction of a Seaplane Pullout; and repairs and improvements to the Airport's Seawall.

To ensure that the full range of issuers related to the proposed actions are addressed and that all significant issues are identified, FAA intends to consult and coordinate with the public, tribal governments, Federal, State and local agencies that have jurisdiction by law or have specific expertise with respect to any environmental impacts associated with the proposed projects.

A general Public Scoping Meeting will be held in the City of Sitka at Centennial Hall at 6:30 p.m. July 27th, 2004. Notification of the scoping meeting will be published in the Juneau Empire, and the Daily Sitka Sentinel. In addition to providing input at the public scoping meeting, the public and agencies may submit written comments to the address in *To Submit Written Comments, Send To.* Comments should be submitted within 60 days of the publication of this notice.

Issued in Anchorage, Alaska, on June 23, 2004.

Byron K. Huffman,

Manager, Airports Division, AAL–600.

[FR Doc. 04–16104 Filed 7–14–04; 8:45 am]

BILLING CODE 4910–13–M

DEPARTMENT OF THE TREASURY

Departmental Offices; Debt Management Advisory Committee Meeting

Notice is hereby given, pursuant to 5 U.S.C. App. 2, 10(a)(2), that a meeting will be held at the Hay-Adams Hotel, 16th and Pennsylvania Avenue, NW., Washington, DC., on August 3, 2004 at 10 a.m. of the following debt management advisory committee: Treasury Borrowing Advisory Committee of The Bond Market Association (''Committee'')

The agenda for the meeting provides for a charge by the Secretary of the Treasury of his designate that the Committee discuss particular issues, and a working session. Following the working session, the Committee will present a written report of its recommendations. The meeting will be closed to the public, pursuant to 5 U.S.C. App. 2, 10(d) and P.L. 103–202, 202(c)(1)(B)(31 U.S.C. 3121 note).

This notice shall constitute my determination, pursuant to the authority placed in heads of agencies by 5 U.S.C. App. 2, 10(d) and vested in me by Treasury Department Order No. 101–05, that the meeting will consist of discussions and debates of the issues presented to the Committee by the Secretary of the Treasury and the making of recommendations of the Committee to the Secretary, pursuant to Public Law 103–202, 202(c)(1)(B). Thus, this information is exempt from disclosure under that provision and 5 U.S.C. 552b(c)(3)(B). In addition, the meeting is concerned with information that is exempt from disclosure under 5 U.S.C. 552b(c)(9)(A). The public interest requires that such meetings be closed to the public because the Treasury Department requires frank and full advice from representatives of the financial community prior to making its final decisions on major financing operations. Historically, this advice has been offered by debt management advisory committees established by the several major segments of the financial community. When so utilized, such a committee is recognized to be an advisory committee under 5 U.S.C. App. 2, 3.

Although the Treasury's final announcement of financing plans may not reflect the recommendations provided in reports of the Committee, premature disclosure of the Committee's deliberations and reports would be likely to lead to significant financial speculation in the securities market. Thus, this meeting falls within the exemption covered by 5 U.S.C. § 552b(c)(9)(A).

Treasury staff will provide a technical briefing to the press on the day before the Committee meeting, following the release of a statement of economic conditions, financing estimates and technical charts. This briefing will give the press an opportunity to ask questions about financing projections and technical charts. The day after the Committee meeting, Treasury will release the minutes of the meeting, any charts that were discussed at the meeting, and the Committee's report to the Secretary.

The Office of Debt Management is responsible for maintaining records of debt management advisory committee meetings and for providing annual reports setting forth a summary of Committee activities and such other matters as may be informative to the public consistent with the policy of 5 U.S.C. 552(b). The Designated Federal Officer or other responsible agency official who may be contacted for additional information is Jeff Huther, Director, Office of Debt Management, at (202) 622–1868.

Dated: July 7, 2004.

Timothy Bitsberger,

Deputy Assistant Secretary, Federal Finance.

[FR Doc. 04–16011 Filed 7–14–04; 8:45 am]

BILLING CODE 4810–25–M

DEPARTMENT OF THE TREASURY

Internal Revenue Service

Proposed Collection; Comment Request for Revenue Procedure 2004–44

AGENCY: Internal Revenue Service (IRS), Treasury.

ACTION: *COM020*Notice and request for comments.

SUMMARY: The Department of the Treasury, as part of its continuing effort to reduce paperwork and respondent burden, invites the general public and other Federal agencies to take this opportunity to comment on proposed and/or continuing information collections, as required by the Paperwork Reduction Act of 1995, Public Law 104–13 (44 U.S.C. 3506(c)(2)(A)). Currently, the IRS is soliciting comments concerning Revenue Procedure 2004–44, Extension of the Amortization Period.

DATES: Written comments should be received on or before September 13, 2004 to be assured of consideration.

ADDRESSES: Direct all written comments to Glenn P. Kirkland, Internal Revenue Service, room 6411, 1111 Constitution Avenue NW., Washington, DC 20224.

FOR FURTHER INFORMATION CONTACT: Requests for additional information or copies of the revenue procedure should be directed to Carol Savage at Internal Revenue Service, room 6407, 1111 Constitution Avenue NW., Washington, DC 20224, or at (202) 622–3945, or through the Internet at *CAROL.A.SAVAGE@irs.gov.*

SUPPLEMENTARY INFORMATION:

Title: Extension of the Amortization Period.

OMB Number: 1545–1890.

Revenue Procedure Number: Revenue Procedure 2004–44.

Abstract: Revenue Procedure 2004–44 describes the process for obtaining an extension of the amortization period for the minimum funding standards set forth in section 412(e) of the Code.

Current Actions: There are no changes being made to the revenue procedure at this time.

Type of Review: Extension of a currently approved collection.

Affected Public: Business or other for-profit organizations, not-for-profit institutions, and farms.

Estimated Number of Respondents: 25.

Estimated Annual Average Time Per Respondent: 100 hours.

Estimated Total Annual Hours: 2,500.

The following paragraph applies to all of the collections of information covered by this notice:

An agency may not conduct or sponsor, and a person is not required to respond to, a collection of information unless the collection of information displays a valid OMB control number.

Books or records relating to a collection of information must be retained as long as their contents may become material in the administration of any internal revenue law. Generally, tax returns and tax return information are confidential, as required by 26 U.S.C. 6103.

Request for Comments: Comments submitted in response to this notice will be summarized and/or included in the request for OMB approval. All comments will become a matter of public record. Comments are invited on: (a) Whether the collection of information is necessary for the proper performance of the functions of the agency, including whether the information shall have practical utility; (b) the accuracy of the agency's estimate of the burden of the collection of information; (c) ways to enhance the quality, utility, and clarity of the information to be collected; (d) ways to minimize the burden of the collection of information on respondents, including through the use of automated collection techniques or other forms of information technology; and (e) estimates of capital or start-up costs and costs of operation, maintenance, and purchase of services to provide information.

Approved: July 8, 2004.

Carol Savage,

Management and Program Analyst.

[FR Doc. 04–16091 Filed 7–14–04; 8:45 am]

BILLING CODE 4830–01–P

DEPARTMENT OF THE TREASURY

Internal Revenue Service

Open Meeting of the Taxpayer Advocacy Panel, E-Filing Issue Committee

AGENCY: Internal Revenue Service (IRS) Treasury.

ACTION: Notice.

SUMMARY: An open meeting of the E-Filing Issue Committee will be conducted (via teleconference). The Taxpayer Advocacy Panel is soliciting public comment, ideas, and suggestions on improving customer service at the Internal Revenue Service.

DATES: The meeting will be held Thursday, August 12, 2004, from 3 to 4 p.m., Eastern Time.

FOR FURTHER INFORMATION CONTACT: Mary Ann Delzer at 1–888–912–1227, or (414) 297–1604.

SUPPLEMENTARY INFORMATION: Notice is hereby given pursuant to Section 10(a)(2) of the Federal Advisory Committee Act, 5 U.S.C. App. (1988) that an open meeting of the Taxpayer Advocacy Panel, E-Filing Issue Committee will be held Thursday, August 12, 2004, from 3 to 4 p.m., Eastern time via a telephone conference call. You can submit written comments to the panel by faxing them to (414) 297–1623, or by mailing them to Taxpayer Advocacy Panel, Stop 1006MIL, 310 West Wisconsin Avenue, Milwaukee, WI 53203–2221, or you can submit them to our Web site at *http://www.improveirs.org.* Public comments will also be welcome during the meeting. Please contact Mary Ann Delzer at 1–888–912–1227 or (414) 297–1604 for dial-in information.

The agenda will include the following: Various IRS issues.

Dated: July 12, 2004.

Bernard Coston,

Director, Taxpayer Advocacy Panel.

[FR Doc. 04–16092 Filed 7–14–04; 8:45 am]

BILLING CODE 4830–01–P

DEPARTMENT OF THE TREASURY

Internal Revenue Service

Open Meeting of the Wage & Investment Reducing Taxpayer Burden (Notices) Issue Committee of the Taxpayer Advocacy Panel

AGENCY: Internal Revenue Service (IRS), Treasury.

ACTION: Notice.

SUMMARY: An open meeting of the Wage & Investment Reducing Taxpayer Burden (Notices) Issue Committee of the Taxpayer Advocacy Panel will be conducted (via teleconference). The Taxpayer Advocacy Panel is soliciting public comments, ideas and suggestions on improving customer service at the Internal Revenue Service.

DATES: The meeting will be held Wednesday, July 28, 2004 from 12 p.m. 1 p.m. EDT.

FOR FURTHER INFORMATION CONTACT: Sallie Chavez at 1–888–912–1227, or 954–423–7979.

SUPPLEMENTARY INFORMATION: Notice is hereby given pursuant to Section 10(a)(2) of the Federal Advisory Committee Act, 5 U.S.C. App. (1988) that an open meeting of the Wage & Investment Reducing Taxpayer Burden (Notices) Issue Committee of the Taxpayer Advocacy Panel will be held Wednesday, July 28, 2004, from 12 p.m. to 1 p.m. EDT via a telephone conference call. If you would like to have the TAP consider a written statement, please call 1–888–912–1227 or 954–423–7979, or write Sallie Chavez, TAP Office, 1000 South Pine Island Road, Suite 340, Plantation, FL 33324. Due to limited conference lines, notification of intent to participate in the telephone conference call meeting must be made with Sallie Chavez. Ms. Chavez can be reached at 1–888–912–1227 or 954–423–7979, or post comments to the Web site: *http://www.improveirs.org.*

The agenda will include: Various IRS issues.

Dated: July 12, 2004.

Bernard Coston,

Director, Taxpayer Advocacy Panel.

[FR Doc. 04–16093 Filed 7–14–04; 8:45 am]

BILLING CODE 4830–01–P

DEPARTMENT OF THE TREASURY

Internal Revenue Service

Open Meeting of the Area 5 Taxpayer Advocacy Panel (Including the States of Iowa, Kansas, Minnesota, Missouri, Nebraska, North Dakota, Oklahoma, South Dakota, and Texas)

AGENCY: Internal Revenue Service (IRS) Treasury.

ACTION: Notice.

SUMMARY: An open meeting of the Area 5 Taxpayer Advocacy Panel will be conducted (via teleconference). The Taxpayer Advocacy Panel is soliciting public comment, ideas, and suggestions on improving customer service at the Internal Revenue Service.

DATES: The meeting will be held Monday, August 9, 2004, at 3 p.m., central daylight time.

FOR FURTHER INFORMATION CONTACT: Audrey Jenkins at 1–888–912–1227, or (718) 488–2085.

SUPPLEMENTARY INFORMATION: Notice is hereby given pursuant to section 10(a)(2) of the Federal Advisory Committee Act, 5 U.S.C. App. (1988) that a meeting of the Area 5 Taxpayer Advocacy Panel will be held Monday, August 9, 2004, at 3 p.m., central daylight time via a telephone conference call. You can submit written comments to the panel by faxing the comments to

(718) 488–2062, or by mail to Taxpayer Advocacy Panel, 10 Metro Tech Center, 625 West Fulton Street, Brooklyn, NY 11201, or you can contact us at *www.improveirs.org*. This meeting is not required to be open to the public, but because we are always interested in community input, we will accept public comments. Please contact Audrey Jenkins at 1–888–912–1227 or (718) 488–2085 for dial-in information.

The agenda will include the following: Various IRS issues.

Dated: July 12, 2004.

Bernard Coston,

Director, Taxpayer Advocacy Panel.

[FR Doc. 04–16094 Filed 7–14–04; 8:45 am]

BILLING CODE 4830–01–P

Corrections

Federal Register

Vol. 69, No. 135

Thursday, July 15, 2004

This section of the FEDERAL REGISTER contains editorial corrections of previously published Presidential, Rule, Proposed Rule, and Notice documents. These corrections are prepared by the Office of the Federal Register. Agency prepared corrections are issued as signed documents and appear in the appropriate document categories elsewhere in the issue.

DEPARTMENT OF EDUCATION

Office of Postsecondary Education; Overview Information Student Support Services (SSS) Program; Notice Inviting Applications for New Awards for Fiscal Year (FY) 2005

Correction

In notice document 04–15471 beginning on page 41235 in the issue of Thursday, July 8, 2004, make the following corrections:

1. On page 41235, in the first column, in the eighth line, under the item titled ''*Deadline for Intergovernmental Review,* '' ''September 7, 2004'' should read ''November 1, 2004.''

2. On page 41236, in the second column, in the third line from the bottom, ''September 7, 2004'' should read ''November 1, 2004.''

[FR Doc. C4–15471 Filed 7–14–04; 8:45 am]

BILLING CODE 1505–01–D

DEPARTMENT OF JUSTICE

Antitrust Division

Notice Pursuant to the National Cooperative Research and Production Act of 1993–USB Flash Drive Alliance (''UFDA'')

Correction

In notice document 04–3066 appearing on page 7014 in the issue of Thursday, February 12, 2004, the subject heading is corrected to read as set forth above.

[FR Doc. C4–3066 Filed 7–14–04; 8:45 am]

BILLING CODE 1505–01–D

Federal Register

Thursday,
July 15, 2004

Part II

Department of the Treasury

Office of the Comptroller of the Currency

12 CFR Part 41

Office of Thrift Supervision

12 CFR Part 571

Board of Governors of the Federal Reserve System

12 CFR Part 222

Federal Deposit Insurance Corporation

12 CFR Part 334

National Credit Union Administration

12 CFR Part 717

Fair Credit Reporting Affiliate Marketing Regulations; Proposed Rule

DEPARTMENT OF THE TREASURY

Office of the Comptroller of the Currency

12 CFR Part 41

[Docket No. 04–16]

RIN 1557–AC88

BOARD OF GOVERNORS OF THE FEDERAL RESERVE SYSTEM

12 CFR Part 222

[Regulation V; Docket No. R–1203]

FEDERAL DEPOSIT INSURANCE CORPORATION

12 CFR Part 334

RIN 3064–AC73

DEPARTMENT OF THE TREASURY

Office of Thrift Supervision

12 CFR Part 571

[No. 2004–31]

RIN 1550–AB90

NATIONAL CREDIT UNION ADMINISTRATION

12 CFR Part 717

Fair Credit Reporting Affiliate Marketing Regulations

AGENCIES: Office of the Comptroller of the Currency, Treasury (OCC); Board of Governors of the Federal Reserve System (Board); Federal Deposit Insurance Corporation (FDIC); Office of Thrift Supervision, Treasury (OTS); and National Credit Union Administration (NCUA).

ACTION: Notice of proposed rulemaking.

SUMMARY: The OCC, Board, FDIC, OTS, and NCUA (Agencies) are publishing for comment proposed regulations to implement the affiliate marketing provisions in section 214 of the Fair and Accurate Credit Transactions Act of 2003, which amends the Fair Credit Reporting Act. The proposed regulations generally prohibit a person from using information received from an affiliate to make a solicitation for marketing purposes to a consumer, unless the consumer is given notice and an opportunity and simple method to opt out of the making of such solicitations.

DATES: Comments must be submitted on or before August 16, 2004.

ADDRESSES: Comments should be directed to:

OCC: You should include OCC and Docket Number 04–16 in your comment. You may submit comments by any of the following methods:

- Federal eRulemaking Portal: *http://www.regulations.gov.* Follow the instructions for submitting comments.
- OCC Web site: *http://www.occ.treas.gov.* Click on ''Contact the OCC,'' scroll down and click on ''Comments on Proposed Regulations.''
- E-mail address: *regs.comments@occ.treas.gov.*
- Fax: (202) 874–4448.
- Mail: Office of the Comptroller of the Currency, 250 E Street, SW., Mail Stop 1–5, Washington, DC 20219.
- Hand Delivery/Courier: 250 E Street, SW., Attn: Public Information Room, Mail Stop 1–5, Washington, DC 20219.

Instructions: All submissions received must include the agency name (OCC) and docket number or Regulatory Information Number (RIN) for this notice of proposed rulemaking. In general, OCC will enter all comments received into the docket without change, including any business or personal information that you provide. You may review comments and other related materials by any of the following methods:

- Viewing Comments Personally: You may personally inspect and photocopy comments at the OCC's Public Information Room, 250 E Street, SW., Washington, DC. You can make an appointment to inspect comments by calling (202) 874–5043.
- Viewing Comments Electronically: You may request e-mail or CD–ROM copies of comments that the OCC has received by contacting the OCC's Public Information Room at *regs.comments@occ.treas.gov.*
- Docket: You may also request available background documents and project summaries using the methods described above.

Board: You may submit comments, identified by Docket No. R–1203, by any of the following methods:

- Agency Web site: *http://www.federalreserve.gov.* Follow the instructions for submitting comments at *http://www.federalreserve.gov/generalinfo/foia/ProposedRegs.cfm.*
- Federal eRulemaking Portal: *http://www.regulations.gov.* Follow the instructions for submitting comments.
- E-mail: *regs.comments@federalreserve.gov.* Include docket number in the subject line of the message.
- Fax: (202) 452–3819 or (202) 452–3102.
- Mail: Jennifer J. Johnson, Secretary, Board of Governors of the Federal Reserve System, 20th Street and Constitution Avenue, NW., Washington, DC 20551.

All public comments are available from the Board's Web site at *www.federalreserve.gov/generalinfo/foia/ProposedRegs.cfm* as submitted, except as necessary for technical reasons. Accordingly, your comments will not be edited to remove any identifying or contact information. Public comments may also be viewed electronically or in paper in Room MP–500 of the Board's Martin Building (20th and C Streets, NW.) between 9 a.m. and 5 p.m. on weekdays.

FDIC: You may submit comments, identified by RIN number 3064–AC73 by any of the following methods:

- Agency Web site: *http://www.fdic.gov/regulations/laws/federal/propose.html.* Follow instructions for submitting comments on the Agency Web site.
- E-Mail: *Comments@FDIC.gov.* Include the RIN number in the subject line of the message.
- Mail: Robert E. Feldman, Executive Secretary, Attention: Comments, Federal Deposit Insurance Corporation, 550 17th Street, NW., Washington, DC 20429.
- Hand Delivery/Courier: Guard station at the rear of the 550 17th Street Building (located on F Street) on business days between 7 a.m. and 5 p.m.

Instructions: All submissions received must include the agency name and RIN for this rulemaking. All comments received will be posted without change to *http://www.fdic.gov/regulations/laws/federal/propose.html* including any personal information provided.

OTS: You may submit comments, identified by number 2004–31, by any of the following methods:

- Federal eRulemaking Portal: *http://www.regulations.gov.* Follow the instructions for submitting comments.
- E-mail address: *regs.comments@ots.treas.gov.* Please include number 2004–31 in the subject line of the message and include your name and telephone number in the message.
- Fax: (202) 906–6518.
- Mail: Regulation Comments, Chief Counsel's Office, Office of Thrift Supervision, 1700 G Street, NW., Washington, DC 20552, Attention: No. 2004–31.
- Hand Delivery/Courier: Guard's Desk, East Lobby Entrance, 1700 G Street, NW., from 9 a.m. to 4 p.m. on business days, Attention: Regulation Comments, Chief Counsel's Office, Attention: No. 2004–31.

Instructions: All submissions received must include the agency name and docket number or Regulatory

Information Number (RIN) for this rulemaking. All comments received will be posted without change to the OTS Internet Site at *http://www.ots.treas.gov/pagehtml.cfm?catNumber=67&an=1,* including any personal information provided.

Docket: For access to the docket to read background documents or comments received, go to *http://www.ots.treas.gov/pagehtml.cfm?catNumber=67&an=1.* In addition, you may inspect comments at the Public Reading Room, 1700 G Street, NW., by appointment. To make an appointment for access, call (202) 906–5922, send an e-mail to *public.info@ots.treas.gov,* or send a facsimile transmission to (202) 906–7755. (Prior notice identifying the materials you will be requesting will assist us in serving you.) We schedule appointments on business days between 10 a.m. and 4 p.m. In most cases, appointments will be available the next business day following the date we receive a request.

NCUA: You may submit comments by any of the following methods. (Please send comments by one method only):

- Federal eRulemaking Portal: *http://www.regulations.gov.* Follow the instructions for submitting comments.
- NCUA Web site: *http://www.ncua.gov/RegulationsOpinionsLaws/proposed_regs/proposed_regs.html.* Follow the instructions for submitting comments.
- E-mail: Address to *regcomments@ncua.gov.* Include ''[Your name] Comments on Proposed Rule Part 717, Fair Credit Reporting—Affiliate Marketing'' in the e-mail subject line.
- Fax: (703) 518–6319. Use the subject line described above for e-mail.
- Mail: Address to Becky Baker, Secretary of the Board, National Credit Union Administration, 1775 Duke Street, Alexandria, Virginia 22314–3428.
- Hand Delivery/Courier: Address to Becky Baker, Secretary of the Board, National Credit Union Administration. Deliver to guard station in the lobby of 1775 Duke Street, Alexandria, Virginia 22314–3428, on business days between 8 a.m and 5 p.m.

FOR FURTHER INFORMATION CONTACT:

OCC: Amy Friend, Assistant Chief Counsel, (202) 874–5200; Michael Bylsma, Director, or Stephen Van Meter, Assistant Director, Community and Consumer Law, (202) 874–5750; Patrick T. Tierney, Attorney, Legislative and Regulatory Activities Division, (202) 874–5090; or Carol Turner, Compliance Specialist, Compliance Department, (202) 874–4858, Office of the Comptroller of the Currency, 250 E Street, SW., Washington, DC 20219.

Board: David A. Stein, Counsel; Minh-Duc T. Le, Ky Tran-Trong, or Krista P. DeLargy, Senior Attorneys, Division of Consumer and Community Affairs, (202) 452–3667 or (202) 452–2412; or Thomas E. Scanlon, Counsel, Legal Division, (202) 452–3594, Board of Governors of the Federal Reserve System, 20th and C Streets, NW., Washington, DC 20551. For users of a Telecommunications Device for the Deaf (TDD) only, contact (202) 263–4869.

FDIC: Ruth R. Amberg, Senior Counsel, (202) 898–3736, Robert A. Patrick, Counsel, (202) 898–3757, or Richard M. Schwartz, Counsel, Legal Division, (202) 898–7424; April Breslaw, Chief, Compliance Section, (202) 898–6609; David P. Lafleur, Policy Analyst, Division of Supervision and Consumer Protection, (202) 898–6569, Federal Deposit Insurance Corporation, 550 17th Street, NW., Washington, DC 20429.

OTS: Cindy Baltierra, Program Analyst (Compliance), Compliance Policy, (202) 906–6540; Richard Bennett, Counsel (Banking and Finance), (202) 906–7409; or Paul Robin, Special Counsel, Regulations and Legislation Division, (202) 906–6648, Office of Thrift Supervision, 1700 G Street, NW., Washington, DC 20552.

NCUA: Chrisanthy J. Loizos, Staff Attorney, Office of General Counsel, (703) 518–6540, National Credit Union Administration, 1775 Duke Street, Alexandria, VA 22314–3428.

SUPPLEMENTARY INFORMATION:

I. Background

The Fair Credit Reporting Act

The Fair Credit Reporting Act (FCRA or Act), which was enacted in 1970, sets standards for the collection, communication, and use of information bearing on a consumer's credit worthiness, credit standing, credit capacity, character, general reputation, personal characteristics, or mode of living. 15 U.S.C. 1681–1681x. In 1996, the Consumer Credit Reporting Reform Act extensively amended the FCRA. Pub. L. 104–208, 110 Stat. 3009.

The FCRA, as amended, provides that a person may communicate to an affiliate or a non-affiliated third party information solely as to transactions or experiences between the consumer and the person without becoming a consumer reporting agency.[1] In addition, the communication of such transaction or experience information among affiliates will not result in any affiliate becoming a consumer reporting agency. *See* FCRA 603(d)(2)(A)(i) and (ii).

Section 603(d)(2)(A)(iii) of the FCRA provides that a person may communicate ''other'' information—that is, information that is not transaction or experience information—among its affiliates without becoming a consumer reporting agency if the person has given the consumer a clear and conspicuous notice that such information may be communicated among affiliates and an opportunity to ''opt out'' or direct that the information not be communicated, and the consumer has not opted out. The notice and opt out provided in section 603(d)(2)(A)(iii) of the FCRA limits the sharing of information among affiliates and was the subject of the October 20, 2000 proposal by the Federal banking agencies and NCUA. *See* 65 FR 63120 (Oct. 20, 2000); 65 FR 64168 (Oct. 26, 2000) (the October 2000 proposal).

The current proposal addresses a new notice and opt out provision that applies to a person's use of certain information that it receives from an affiliate to market its products and services to consumers. Although there is a certain degree of overlap between the two opt outs, the two opt outs are distinct and serve different purposes. Therefore, nothing in this proposal regarding the opt out for affiliate marketing supersedes or replaces the affiliate sharing opt out contained in section 603(d)(2)(A)(iii) of the Act.

The Fair and Accurate Credit Transactions Act of 2003

The Fair and Accurate Credit Transactions Act of 2003 (FACT Act) was signed into law on December 4, 2003. Pub. L. 108–159, 117 Stat. 1952. In general, the FACT Act amends the FCRA to enhance the ability of consumers to combat identity theft, to increase the accuracy of consumer reports, and to allow consumers to exercise greater control regarding the type and amount of solicitations they receive. The FACT Act also restricts the use and disclosure of sensitive medical information. To bolster efforts to improve financial literacy among consumers, the FACT Act creates a new Financial Literacy and Education Commission empowered to take appropriate actions to improve the financial literacy and education programs, grants, and materials of the Federal government. Lastly, to promote increasingly efficient national credit markets, the FACT Act establishes uniform national standards in key areas

[1] The FCRA creates substantial obligations for a person that meets the definition of a ''consumer reporting agency'' in section 603(f) of the statute.

of regulation regarding consumer report information.

Section 214 of the FACT Act adds a new section 624 of the FCRA. This new provision gives consumers the right to restrict a person from using certain information about a consumer obtained from an affiliate to make solicitations to that consumer. That section also requires the Agencies, in consultation and coordination with each other, to issue regulations in final form implementing section 214 not later than 9 months after the date of enactment.[2] These rules must become effective not later than 6 months after the date on which they are issued in final form.

II. Explanation of the Proposed Regulations

New section 624 of the FCRA generally provides that, if a person shares certain information about a consumer with an affiliate, the affiliate may not use that information to make or send solicitations to the consumer about its products or services, unless the consumer is given notice and a reasonable opportunity to opt out of such use of the information and the consumer does not opt out. Section 624 governs the use of information by an affiliate, not the sharing of information with or among affiliates. As such, the new opt out right contained in section 624 is distinct from the existing FCRA opt out right for affiliate sharing under section 603(d)(2)(A)(iii), although these opt out rights and the information subject to these two opt outs overlap to some extent. As noted above, the FCRA allows some information (transaction or experience information) to be shared without giving the consumer notice and an opportunity to opt out, and provides that ''other'' information may not be shared among affiliates without giving the consumer notice and an opportunity to opt out. The new opt out right for affiliate marketing generally applies to both transaction or experience information and ''other'' information.

The Agencies seek comment on these proposed regulations implementing section 624 of the FCRA, including in particular the matters discussed below.

Responsibility for Providing Notice and an Opportunity To Opt Out

Section 624 does not specify which affiliate must give the consumer notice and an opportunity to opt out of the use of the information by an affiliate for marketing purposes. Under one view, the person that receives certain consumer information from its affiliate and wants to use that information to make or send solicitations to the consumer could be responsible for giving the notice because the statute is drafted as a prohibition on the affiliate that receives the information from using such information to send solicitations, rather than as an affirmative duty imposed on the affiliate that sends or communicates that information. On the other hand, section 624(a)(1)(A) provides that the disclosure must state that the information ''may be communicated'' among affiliates for purposes of making solicitations, suggesting that the affiliate that sends or communicates information about a consumer should be responsible for providing the notice. In addition, section 214(b)(3) of the FACT Act requires the Agencies to consider existing affiliate sharing notification practices and provide for coordinated and consolidated notices. Similarly, section 214 allows for the combination of affiliate marketing opt out notices with other notices required by law, which may include Gramm-Leach-Bliley Act (GLB Act) privacy notices. Thus, the provisions of section 214 suggest that the person communicating information about a consumer to its affiliate should give the notice because that is the person that would likely provide the affiliate sharing opt out notice under section 603(d)(2)(A)(iii) of the FCRA and other disclosures required by law.

The Agencies have proposed that the person communicating information about a consumer to its affiliate should be responsible for satisfying the notice requirement, if applicable. A rule of construction provides flexibility to allow the notice to be given by the person that communicates information to its affiliate, by the person's agent, or through a joint notice with one or more other affiliates. This approach provides flexibility and facilitates the use of a single notice. At the same time, it ensures that the notice is not provided solely by the affiliate that receives and uses the information to make or send solicitations, which may be a person from which the consumer would not expect to receive important notices regarding the consumer's opt out rights. The Agencies invite comment on whether the affiliate receiving the information should be permitted to give the notice solely on its own behalf. The Agencies specifically solicit comment on whether a receiving affiliate could provide notice without making or sending any solicitations at the time of the notice and on whether such a notice would be effective.

Scope of Coverage

The statute specifies certain circumstances, which are included in the proposed regulations, when the requirements do not apply. New section 624(a)(4) provides that the requirements and prohibitions of that section do not apply, for example, when: (1) The affiliate receiving the information has a pre-existing business relationship with the consumer; (2) the information is used to perform services for another affiliate (subject to certain conditions); (3) the information is used in response to a communication initiated by the consumer; or (4) the information is used to make a solicitation that has been authorized or requested by the consumer. The Agencies have incorporated each of these statutory exceptions into the proposed rule.

In defining the circumstances when the regulatory provisions apply, the proposal focuses on the communication of eligibility information among affiliates. Under the proposal, ''eligibility information'' is defined to mean any information the communication of which would be a ''consumer report'' if the statutory exclusions from the definition of ''consumer report'' in section 603(d)(2)(A) of the FCRA for transaction or experience information and for ''other'' information that is subject to the affiliate-sharing opt out did not apply. Under section 603(d)(1) of the FCRA, a ''consumer report'' means any written, oral, or other communication of any information by a consumer reporting agency bearing on the consumer's credit worthiness, credit standing, credit capacity, character, general reputation, personal characteristics, or mode of living which is used or expected to be used or collected in whole or in part for the purpose of serving as a factor in establishing the consumer's eligibility for credit or insurance to be used primarily for personal, family, or household purposes, employment purposes, or any other purpose authorized in section 604 of the FCRA. The Agencies invite comment on whether the term ''eligibility information,'' as defined, appropriately reflects the scope of coverage, or whether the regulation should track the more complicated language of the statute regarding the communication of information that would be a consumer report, but for clauses (i), (ii), and (iii) of section 603(d)(2)(A) of the FCRA.

[2] The Federal Trade Commission (FTC) and the Securities and Exchange Commission (SEC) are also required to issue regulations under new section 624 in consultation and coordination with the Agencies. The FTC published its proposed rule on June 15, 2004 (69 FR 33,324). The SEC proposal will also be published in a separate **Federal Register** notice.

Duration of Opt Out

Section 624 provides that a consumer's election to prohibit marketing based on shared information shall be effective for at least 5 years. Accordingly, the proposal provides that a consumer's opt out election is valid for a period of at least 5 years (the opt out period), beginning as soon as reasonably practicable after the consumer's opt out election is received, unless the consumer revokes the election in writing, or if the consumer agrees, electronically, before the opt out period has expired. When a consumer opts out, an affiliate that receives eligibility information about that consumer from another affiliate may not make or send solicitations to the consumer during the opt out period based on that information, unless an exception applies or the opt out is revoked.

To avoid the cost and burden of tracking consumer opt outs over 5-year periods with varying start and end dates and sending out extension notices in 5-year cycles, some companies may choose to treat the consumer's opt out election as effective for a period longer than 5 years, including in perpetuity, unless revoked by the consumer. An institution that chooses to honor a consumer's opt out election for more than 5 years would not violate the proposed regulations.

Key Definitions

Section 624 allows eligibility information shared with an affiliate to be used by that affiliate in making solicitations in certain circumstances, including where the affiliate has a pre-existing business relationship with the consumer. The terms ''solicitation'' and ''pre-existing business relationship'' are defined in the statute and the proposed regulation, and discussed in detail below in the Section-by-Section Analysis. The Agencies have the authority to prescribe by regulation circumstances other than those specified in the statute that would constitute a ''pre-existing business relationship'' or would not constitute a ''solicitation.'' The Agencies seek comment on whether there are additional circumstances that should be deemed a ''pre-existing business relationship'' or other types of communications that should not be deemed a ''solicitation.''

The Agencies solicit comment on all aspects of the proposal, including but not limited to items discussed in the Section-by-Section Analysis below.

III. Section-by-Section Analysis

Section __.1 Purpose, Scope, and Effective Dates

Proposed § ____.1 sets forth the purpose and scope of each agency's regulations.

Section __.2 Examples

Proposed § ____.2 describes the use of examples in the proposed regulations. In particular, the examples in this part are not exclusive. However, compliance with an example, to the extent applicable, constitutes compliance with this part. Examples in a paragraph illustrate only the issue described in the paragraph and do not illustrate any other issue that may arise in this part.

Section __.3 Definitions

Proposed § ____.3 contains definitions for the following terms: ''affiliate'' (as well as the related terms ''company'' and ''control''); ''clear and conspicuous''; ''communication''; ''consumer''; ''eligibility information''; ''person''; ''pre-existing business relationship''; and ''solicitation.''

Affiliate

Several FCRA provisions apply to information sharing with persons ''related by common ownership or affiliated by corporate control,'' ''related by common ownership or affiliated by common corporate control,'' or ''affiliated by common ownership or common corporate control.'' *E.g.*, FCRA, sections 603(d)(2), 615(b)(2), and 624(b)(2). Section 2 of the FACT Act defines the term ''affiliate'' to mean ''persons that are related by common ownership or affiliated by corporate control.''

The FCRA, the FACT Act, and the GLB Act contain a variety of definitions of ''affiliate.'' Proposed paragraph (b) simplifies the various FCRA and FACT Act formulations by defining ''affiliate'' to mean any person that is related by common ownership or common corporate control with another person.[3] The Agencies believe it is important to harmonize the various definitions of affiliate as much as possible and construe the various FCRA and FACT Act definitions to mean the same thing. Comment is solicited on whether there is any meaningful difference between the various FCRA, FACT Act, and GLB Act definitions. In addition, the proposal uses a definition of ''control'' that applies exclusively to the control of a ''company,'' and defines ''company'' to include any corporation, limited liability company, business trust, general or limited partnership, association, or similar organization. *See* proposed paragraphs (d) (''company'') and (i) (''control'').[4]

Clear and Conspicuous

Proposed paragraph (c) defines the term ''clear and conspicuous'' to mean reasonably understandable and designed to call attention to the nature and significance of the information presented. Institutions retain flexibility in determining how best to meet the clear and conspicuous standard.

Institutions may wish to consider a number of practices to make their notices clear and conspicuous. A notice or disclosure may be made reasonably understandable through methods that include but are not limited to: using clear and concise sentences, paragraphs, and sections; using short explanatory sentences; using bullet lists; using definite, concrete, everyday words; using active voice; avoiding multiple negatives; avoiding legal and highly technical business terminology; and avoiding explanations that are imprecise and are readily subject to different interpretations. Various methods may also be used to design a notice or disclosure to call attention to the nature and significance of the information in it, including but not limited to: using a plain-language heading; using a typeface and type size that are easy to read; using wide margins and ample line spacing; using boldface or italics for key words. Institutions that provide the notice on a Web page may use text or visual cues to encourage scrolling down the page if necessary to view the entire notice, and take steps to ensure that other elements on the Web site (such as text, graphics, hyperlinks, or sound) do not distract attention from the notice.

When a notice or disclosure is combined with other information, methods for designing the notice or disclosure to call attention to the nature and significance of the information in it may include using distinctive type sizes, styles, fonts, paragraphs, headings, graphic devices, and groupings or other devices. It is unnecessary, however, to use distinctive features, such as distinctive type sizes, styles, or fonts, to differentiate an affiliate marketing opt out notice from other components of a required

[3] For purposes of this regulation, an ''affiliate'' of a bank or savings association includes an operating subsidiary of such bank or savings association. An affiliate of a credit union includes a credit union service organization that is controlled by a Federal credit union.

[4] For purposes of the proposed regulation, NCUA will presume a Federal credit union has a controlling influence over the management or policies of a credit union service organization if it is 67 percent owned by credit unions.

disclosure, for example, where a privacy notice under the GLB Act includes several opt out disclosures in a single notice. Nothing in the clear and conspicuous standard requires the segregation of an affiliate marketing opt out notice when it is combined with a privacy notice under the GLB Act or other required disclosures.

It may not be feasible to incorporate all of the methods described above all the time. For example, an institution may have to use legal terminology, rather than everyday words, in certain circumstances to provide a precise explanation. Institutions are encouraged, but not required, to consider the practices described above in designing their notices or disclosures, as well as using readability testing to devise notices that are understandable to consumers.

Consumer

Proposed paragraph (e) defines the term ''consumer'' to mean an individual, which follows the statutory definition in section 603(c) of the FCRA. For purposes of this definition, an individual acting through a legal representative qualifies as a consumer.

Eligibility Information

Under proposed paragraph (j), the term ''eligibility information'' means any information the communication of which would be a consumer report if the exclusions from the definition of ''consumer report'' in section 603(d)(2)(A) of the FCRA did not apply. Eligibility information may include a person's own transaction or experience information, such as information about a consumer's account history with that person, and other information, such as information from credit bureau reports or applications.

Person

Proposed paragraph (l) defines the term ''person'' to mean any individual, partnership, corporation, trust, estate, cooperative, association, government or governmental subdivision or agency, or other entity. A person may act through an agent, such as a licensed agent (in the case of an insurance company), a trustee (in the case of a trust), or any other agent. For purposes of this part, actions taken by an agent on behalf of a person that are within the scope of the agency relationship will be treated as actions of that person.

Pre-Existing Business Relationship

Proposed paragraph (m) defines this term to mean a relationship between a person and a consumer based on the following: (1) A financial contract between the person and the consumer that is in force; (2) the purchase, rental, or lease by the consumer of that person's goods or services, or a financial transaction (including holding an active account or a policy in force or having another continuing relationship) between the consumer and that person, during the 18-month period immediately preceding the date on which a solicitation covered by subpart C is made or sent to the consumer; or (3) an inquiry or application by the consumer regarding a product or service offered by that person during the 3-month period immediately preceding the date on which a solicitation covered by subpart C is made or sent to the consumer. The proposed definition generally tracks the statutory definition contained in section 624 of the Act, with certain revisions for clarity.

The Agencies have the statutory authority to define in the regulations other circumstances that qualify as a pre-existing business relationship. The Agencies have not proposed to exercise this authority to expand the definition of ''pre-existing business relationship'' beyond the circumstances set forth in the statute. Comment is solicited, however, on whether there are other circumstances that the Agencies should include within the definition of ''pre-existing business relationship.''

Solicitation

Proposed paragraph (n) defines this term to mean marketing initiated by a person to a particular consumer that is based on eligibility information communicated to that person by its affiliate and is intended to encourage the consumer to purchase a product or service. A communication, such as a telemarketing solicitation, direct mail, or e-mail, is a solicitation if it is directed to a specific consumer based on eligibility information. The proposed definition of solicitation does not, however, include communications that are directed at the general public without regard to eligibility information, even if those communications are intended to encourage consumers to purchase products and services from the person initiating the communications. The proposed definition tracks the statutory definition contained in section 624 of the Act, with certain revisions for clarity.

The Agencies have the statutory authority to determine by regulation that other communications do not constitute a solicitation. The Agencies have not proposed to exercise this authority to specify other communications that would not be deemed ''solicitations'' beyond the circumstances set forth in the statute. Comment is solicited, however, on whether there are other communications that the Agencies should determine do not meet the definition of ''solicitation.'' Comment is also requested on whether, and to what extent, various tools used in Internet marketing, such as pop-up ads, may constitute solicitations as opposed to communications directed at the general public, and whether further guidance is needed to address Internet marketing.

Section ____.20 Use of Eligibility Information by Affiliates for Marketing

Proposed § ____.20 establishes the basic rules governing the requirement to provide the consumer with notice and a reasonable opportunity to opt out of a person's use of eligibility information that it obtains from an affiliate for the purpose of making or sending solicitations to the consumer. The statute is ambiguous because it does not specify which affiliate must provide the opt out notice to the consumer. The proposed regulation would resolve this ambiguity by imposing certain duties on the person that communicates the eligibility information and certain duties on the affiliate that receives the information with the intent to use that information to make or send solicitations to consumers. These bifurcated duties are set forth in paragraphs (a) and (b).[5]

Paragraph (a) sets forth the duty of a person that communicates eligibility information to an affiliate. Under the proposal, before an affiliate may use eligibility information to make or send solicitations to the consumer, the person that communicates eligibility information about a consumer to an affiliate must provide a notice to the consumer stating that such information may be communicated to and used by the affiliate to make or send solicitations to the consumer regarding the affiliate's products and services, and must give the consumer a reasonable opportunity and a simple method to opt out.

Some organizations may choose to share eligibility information among affiliates but not allow the affiliates that receive that information to use it for marketing purposes. In that case, proposed paragraph (a) would not apply and an opt out notice would not be required if none of the affiliates that receive eligibility information use it to make or send solicitations to consumers.

[5] Because the proposed regulations generally would impose duties on more than one person in an affiliated group, different Agencies may have enforcement authority over the different affiliates involved in communicating and using eligibility information to make or send solicitation.

Under the proposal, paragraph (a) would not apply if, for example, an insurance company asks its affiliated bank to include insurance company marketing material in periodic statements sent to consumers by the bank without regard to eligibility information. The Agencies invite comment on whether, given the policy objectives of section 214 of the FACT Act, proposed paragraph (a) should apply if affiliated companies seek to avoid providing notice and opt out by engaging in the ''constructive sharing'' of eligibility information to conduct marketing. For example, the Agencies request commenters to consider the applicability of paragraph (a) in the following circumstance. A consumer has a relationship with a bank, and the bank is affiliated with an insurance company. The insurance company provides the bank with specific eligibility criteria, such as consumers having combined deposit balances in excess of $50,000, and average monthly demand account deposits in excess of $10,000, for the purpose of having the bank make solicitations on behalf of the insurance company to consumers that meet those criteria. Additionally, the consumer responses provide the insurance company with discernible eligibility information, such as a response form that is coded to identify the consumer as an individual who meets the specific eligibility criteria.

Proposed paragraph (a) also contains two rules of construction. The first rule of construction provides that the notice may be provided either in the name of a person with which the consumer currently does or previously has done business or in one or more common corporate names shared by members of an affiliate group of companies that includes the common corporate name used by that person. The rule of construction also provides alternatives regarding the manner in which the notice is given. A person that communicates eligibility information to an affiliate may provide the notice directly to the consumer, or may use an agent to provide the notice on the person's behalf. If the agent is the person's affiliate, the agent may not include any solicitations other than those of the person on or with the notice, unless one of the exceptions in paragraph (c) applies. Additionally, the agent must provide the opt out notice in the name of the person or a common corporate name.[6] If an agent is used, the person remains responsible for any failure of the agent to fulfill its notice obligations. Alternatively, a person may provide a joint notice with one or more of its affiliates as provided in § ____.24(c) and discussed more fully below.

This rule of construction strikes a balance between giving institutions flexibility to allow different entities within the affiliated group to provide the notice while ensuring that the notice provided to the consumer is meaningful and designed to be effective. Thus, an opt out notice provided to the consumer solely in the name of an affiliate that receives eligibility information but that is not known or recognizable to the consumer as an entity with which the consumer does or has done business is not likely to be an effective notice. For example, if the consumer has a relationship with the ABC affiliate, but the opt out notice is provided solely in the name of the XYZ affiliate, which does not share a common name with the ABC affiliate, then the notice is not likely to be effective. Indeed, many consumers may disregard a notice from the XYZ affiliate on the assumption that the notice is unsolicited junk mail. If, however, the consumer has a relationship with the ABC affiliate, and the opt out notice is provided jointly in the name of all affiliated companies that share the ABC name and the XYZ name, the notice is likely to be effective.

The second rule of construction makes clear that it is not necessary for each affiliate that communicates the same eligibility information to provide an opt out notice to the consumer, so long as the notice provided by the affiliate that initially communicated the information is broad enough to cover use of that information by each affiliate that receives and uses it to make solicitations. For example, if affiliate A communicates eligibility information to affiliate B, and affiliate B communicates that same information to affiliate C, affiliate B does not have to provide the consumer with an opt out notice, so long as affiliate A's notice is broad enough to cover both B's and C's use of that information to make solicitations to the consumer. Examples are provided to illustrate how the rules of construction work.

Paragraph (a) contemplates that the opt out notice will be provided to the consumer in writing or, if the consumer agrees, electronically. Comment is solicited on whether there are circumstances in which it is necessary and appropriate to allow oral notice and opt out and how an oral notice can satisfy the clear and conspicuous standard in the statute. In this regard, the Agencies note that certain exceptions to the notice and opt out requirement may be triggered by an oral communication from or with a consumer. These exceptions are contained in paragraph (c) and discussed below.

Paragraph (b) sets forth the general duties of an affiliate that receives eligibility information (''the receiving affiliate''). The receiving affiliate may not use eligibility information it receives from an affiliate to make solicitations to the consumer unless, prior to such use, the consumer has been provided an opt out notice, as described in paragraph (a), that applies to that affiliate's use of eligibility information and a reasonable opportunity and simple method to opt out and the consumer did not opt out of that use.

Paragraphs (a) and (b) focus on whether the information communicated to affiliates meets the definition of ''eligibility information.'' Section 624(a)(1) of the Act focuses on ''a communication of information that would be a consumer report, but for clauses (i), (ii), and (iii) of section 603(d)(2)(A).'' The Agencies have proposed to define ''eligibility information'' in a manner consistent with the statutory definition. The Agencies recognize, however, that there are other exceptions to the statutory definition of ''consumer report,'' such that it may be burdensome for institutions to determine and track whether consumer report information is eligibility information (to which the marketing opt out provisions of section 624 apply) or information that may be shared with affiliates under other exceptions in the FCRA (to which the marketing opt out provisions of section 624 do not apply). To minimize this burden, the Agencies believe that institutions may satisfy the requirements of section 624 by voluntarily offering consumers the ability to opt out of marketing based on consumer report information that is shared under any of the exceptions in section 603(d)(2) of the FCRA, not just those in section 603(d)(2)(A), as required by section 624.

Proposed § ____.20(c) contains exceptions to the requirements of subpart C. Paragraph (c) incorporates each of the following statutory exceptions to the affiliate marketing notice and opt out requirements set forth in section 624(a)(4) of the FCRA: (1) Using the information to make a solicitation to a consumer with whom the affiliate has a pre-existing business relationship; (2) using the information to facilitate communications to an

[6] If the agent sending the notice is not an affiliate, the agent would only be permitted to use the information for limited purposes under the GLB Act privacy regulations.

individual for whose benefit the affiliate provides employee benefit or other services under a contract with an employer related to and arising out of a current employment relationship or an individual's status as a participant or beneficiary of an employee benefit plan; (3) using the information to perform services for another affiliate, unless the services involve sending solicitations on behalf of the other affiliate and such affiliate is not permitted to send such solicitations itself as a result of the consumer's decision to opt out; (4) using the information to make solicitations in response to a communication initiated by the consumer; (5) using the information to make solicitations in response to a consumer's request or authorization for a solicitation; or (6) if compliance with the requirements of section 624 by the affiliate would prevent that affiliate from complying with any provision of state insurance laws pertaining to unfair discrimination in a state where the affiliate is lawfully doing business. *See* FCRA, section 624(a)(4). Several of these exceptions are discussed below.

Proposed paragraph (c)(1) clarifies that the provisions of this subpart do not apply where the affiliate using the information to make a solicitation to a consumer has a pre-existing business relationship with that consumer. As noted above, a pre-existing business relationship exists when: (1) There is a financial contract in force between the affiliate and the consumer; (2) the consumer and the affiliate have engaged in a financial transaction (including holding an active account or a policy in force or having another continuing relationship) during the 18 months immediately preceding the date of the solicitation; (3) the consumer has purchased, rented, or leased the affiliate's goods or services during the 18 months immediately preceding the date of the solicitation; or (4) the consumer has inquired about or applied for a product or service offered by the affiliate during the 3-month period immediately preceding the date of the solicitation.

The third and fourth elements of the definition are substantially similar to the definition of ''established business relationship'' under the amended Telemarketing Sales Rule (TSR) (16 CFR 310.2(n)). That definition was informed by Congress's intent that the ''established business relationship'' exemption to the ''do not call'' provisions of the Telephone Consumer Protection Act (47 U.S.C. 227 *et seq.*) should be grounded on the reasonable expectations of the consumer.[7] Congress's incorporation of similar language in the definition of ''pre-existing business relationship'' [8] suggests that it would be appropriate to consider the reasonable expectations of the consumer in determining the scope of this exception. Thus, for purposes of this regulation, an inquiry includes any affirmative request by a consumer for information, such that the consumer would reasonably expect to receive information from the affiliate about its products or services.[9] A consumer would not reasonably expect to receive information from the affiliate if the consumer does not request information or does not provide contact information to the affiliate. Proposed paragraph (d)(1) provides examples of the pre-existing business relationship exception.

Proposed paragraph (c)(3) clarifies that the provisions of this subpart do not apply where the information is used to perform services for another affiliate, except that the exception does not permit the service provider to make or send solicitations on behalf of itself or an affiliate if the service provider or the affiliate, as applicable, would not be permitted to make or send such solicitations as a result of the consumer's election to opt out. Thus, when the notice has been provided to a consumer and the consumer has opted-out, an affiliate subject to the consumer's opt out election that has received eligibility information from a person that has a relationship with the consumer may not circumvent the opt out by instructing the person with the consumer relationship or another affiliate to make or send solicitations to the consumer on its behalf.

Proposed paragraph (c)(4) incorporates the statutory exception for information used in response to a communication initiated by the consumer. The proposed rule clarifies that this exception may be triggered by an oral, electronic, or written communication initiated by the consumer. To be covered by the proposed exception, use of eligibility information must be responsive to the communication initiated by the consumer. For example, if a consumer calls an affiliate to ask about retail locations and hours, the affiliate may not then use eligibility information to make solicitations to the consumer about specific products because those solicitations would not be responsive to the consumer's communication. Conversely, if the consumer calls an affiliate to ask about its products or services, then solicitations related to those products or services would be responsive to the communication and thus permitted under the exception. The time period during which solicitations remain responsive to the consumer's communication will depend on the facts and circumstances. The proposal also contemplates that a consumer has not initiated a communication if an affiliate makes the initial call and leaves a message for the consumer to call back, and the consumer responds. Proposed paragraph (d)(2) provides examples of the consumer-initiated communications exception.

Proposed paragraph (c)(5) provides that the provisions of this subpart do not apply where the information is used to make solicitations affirmatively authorized or requested by the consumer. This provision may be triggered by an oral, electronic, or written authorization or request by the consumer. Under the proposal, a pre-selected check box or boilerplate language in a disclosure or contract would not constitute an affirmative authorization or request.

The exception in paragraph (c)(5) could be triggered, for example, if a consumer obtains a mortgage from a mortgage lender and authorizes or requests to receive solicitations about homeowner's insurance from an insurance affiliate of the mortgage lender. Under this exception, the consumer may provide the authorization or make the request either through the person with whom the consumer has a business relationship or directly to the affiliate that will make the solicitation. In addition, the duration of the authorization or request will depend on the facts and circumstances. Finally, nothing in this exception supersedes the restrictions contained in the Telemarketing Sales Rule, including the ''Do-Not-Call List'' established by the FTC and the Federal Communications Commission. Proposed paragraph (d)(3) provides an example of the affirmative authorization or request exception.

The exceptions in proposed paragraphs (c)(1), (4), and (5) described above overlap in certain situations. For example, if a consumer who has an account with a bank makes a telephone call to the bank's securities affiliate and requests information about brokerage services or mutual funds, the securities affiliate may use information about the consumer it obtains from the bank to make or send solicitations in response

[7] H.R. Rep. No. 102–317, at 14–15 (1991). *See also* 68 FR 4580, 4591–94 (Jan. 29, 2003).

[8] 149 Cong. Rec. S13,980 (daily ed. Nov. 5, 2003) (statement of Senator Feinstein).

[9] *See* 68 FR at 4594.

to the telephone call initiated by the consumer under the exception in paragraph (c)(4) for responding to a communication initiated by the consumer. In addition, the consumer's request for information from the securities affiliate triggers the exceptions in paragraph (c)(1) for inquiries by the consumer regarding a product or service offered by the securities affiliate under the statutory definition of a ''pre-existing business relationship'' as well as the exception in paragraph (c)(5) for a use in response to a solicitation requested by the consumer.

Proposed paragraph (e) provides that the provisions of this subpart do not apply to eligibility information that was received by an affiliate prior to the date on which compliance with these regulations is required. This incorporates a limitation contained in the statute. The mandatory compliance date will be included in the final rule. Comment is requested on what the mandatory compliance date should be and whether it should be different from the effective date of the final regulations.

Finally, proposed paragraph (f) clarifies the relationship between the affiliate sharing notice and opt out under section 603(d)(2)(A)(iii) of the FCRA and the affiliate marketing notice and opt out in new section 624 of the Act. Specifically, paragraph (f) provides that nothing in subpart C (the affiliate marketing regulations) limits the responsibility of a company to comply with the notice and opt out provisions of section 603(d)(2)(A)(iii) of the Act before it shares information other than transaction or experience information among affiliates to avoid becoming a consumer reporting agency.

Section ____.21 Contents of Opt Out Notice

Proposed § ____.21 addresses the contents of the opt out notice. Proposed paragraph (a) requires that the opt out notice be clear, conspicuous, and concise, and accurately disclose: (1) That the consumer may elect to limit a person's affiliate from using eligibility information about the consumer that it obtains from that person to make or send solicitations to the consumer; (2) if applicable, that the consumer's election will apply for a specified period of time and that the consumer will be allowed to extend the election once that period expires; and (3) a reasonable and simple method for the consumer to opt out. Use of a model form in Appendix A in appropriate circumstances would comply with paragraph (a), but is not required. Paragraph (a) reflects the intent of Congress, as expressed in section 624(a)(2)(B) of the FCRA, that the notice required by this subpart must be ''clear, conspicuous, and concise,'' and that the method for opting out must be ''simple.''

Proposed paragraph (b) defines the term ''concise'' to mean a reasonably brief expression or statement. Paragraph (b) also provides that a notice required by subpart C may be concise even if it is combined with other disclosures required or authorized by Federal or State law. Such disclosures include, but are not limited to, a notice under the GLB Act, a notice under section 603(d)(2)(A)(iii) of the FCRA, and other similar consumer disclosures. Finally, paragraph (b) clarifies that the requirement for a concise notice would be satisfied by the appropriate use of one of the model forms contained in Appendix A of this part, although use of the model forms is not required.

Proposed paragraph (c) provides that the notice may allow a consumer to choose from a menu of alternatives when opting out, such as by selecting certain types of affiliates, certain types of information, or certain modes of delivery from which to opt out, so long as one of the alternatives gives the consumer the opportunity to opt out with respect to all affiliates, all eligibility information, and all methods of delivering solicitations.

Proposed paragraph (d) provides that, where an institution elects to give consumers a broader right to opt out of marketing than is required by law, the institution would have the ability to modify the contents of the opt out notice to reflect accurately the scope of the opt out right it provides to consumers. Appendix A provides Model Form A–3 that may be helpful for institutions that wish to allow consumers to prevent all marketing from the institution and its affiliates, but use of the model form is not required.

Section ____.22 Reasonable Opportunity To Opt Out

Proposed paragraph (a) provides that before the affiliate uses the eligibility information to make or send solicitations to the consumer, the person that communicates such eligibility information to the affiliate must provide the consumer with a reasonable opportunity to opt out following delivery of the opt out notice. Given the variety of circumstances in which institutions must provide a reasonable opportunity to opt out, the Agencies believe that a reasonable opportunity to opt out should be construed as a general test that avoids setting a mandatory waiting period in all cases. A general standard would provide flexibility to allow affiliates to use eligibility information received from another affiliate to make or send solicitations at an appropriate point in time which may vary depending upon the circumstances, while assuring that the consumer is given a realistic opportunity to prevent such use of this information. The Agencies also believe that providing examples for what constitutes a reasonable opportunity to opt out may be useful by illustrating how the opt out might work in different situations and by providing a safe harbor for opt out periods of 30 days in certain situations. Although 30 days is a safe harbor, a person subject to this requirement may decide, at its option, to give consumers more than 30 days in which to decide whether or not to opt out. Whether a shorter waiting period would be adequate in certain situations depends on the circumstances.

Proposed paragraphs (b)(1) and (2) contain examples of reasonable opportunities to opt out by mail or by electronic means. These examples are consistent with examples used in the GLB Act privacy rules.

The example of a reasonable opportunity to opt out for notices given by electronic means in paragraph (b)(2) is triggered by the consumer's acknowledgement of receipt of the electronic notice. Several commenters on the October 2000 proposal sought clarification of an identical acknowledgement of receipt reference in the electronic delivery example, suggesting that such a reference would be inconsistent with the E-Sign Act and beyond the scope of the Agencies' interpretive authority. The current proposal retains the acknowledgement reference. This reference is consistent with an example in the GLB Act privacy regulations and the Agencies' determination that electronic delivery of the FCRA affiliate-marketing opt out notices would not require consumer consent in accordance with E-Sign, because nothing in section 624 of the Act requires that the notice be provided in writing. Moreover, this reference is contained in an example. Thus, affiliates subject to this rule retain flexibility to determine the form of consumer agreement.

Proposed paragraph (b)(3) would provide an example of a reasonable opportunity to opt out where, in a transaction that is conducted electronically, the consumer is required to decide, as a necessary part of proceeding with the transaction, whether or not to opt out before completing the transaction, so long as the institution provides a simple

process at the Internet Web site that the consumer may use at that time to opt out. In this example, the opt out notice would automatically be provided to the consumer, such as through a non-bypassable link to an intermediate Webpage, or ''speedbump.'' The consumer would be given a choice of either opting out or not opting out at that time through a simple process conducted at the Web site. For example, the consumer could be required to check a box right at the Internet Web site in order to opt out or decline to opt out before continuing with the transaction. However, this example would not cover a situation where the consumer is required to send a separate e-mail or visit a different Internet Web site in order to opt out. The Agencies seek comment on this example and whether additional protections or clarifications are needed.

Proposed paragraph (b)(4) illustrates that including the affiliate marketing opt out notice in a notice under the GLB Act will satisfy the reasonable opportunity standard. In such cases, the consumer should be allowed to exercise the opt out in the same manner and be given the same amount of time to exercise the opt out as is provided for any other opt out provided in the GLB Act privacy notice. This example is consistent with the statutory requirement that the Agencies consider methods for coordinating and combining notices.

Proposed paragraph (b)(5) illustrates how an ''opt in'' can meet the requirement to provide a reasonable opportunity to opt out. Specifically, if an institution has a policy of not allowing its affiliates to use eligibility information to market to consumers without the consumer's affirmative consent, providing the consumer with an opportunity to ''opt in'' or affirmatively consent to such use constitutes a reasonable opportunity to opt out. The consumer's affirmative consent must be documented, and a pre-selected check box is not evidence of the consumer's affirmative consent.

The proposed regulations do not require institutions subject to this rule to disclose in their opt out notices how long a consumer has to respond to the opt out notice before eligibility information communicated to other affiliates will be used to make or send solicitations to the consumer. Institutions, however, have the flexibility to include such disclosures in their notices. In this respect, the proposed regulations are consistent with the GLB Act privacy regulations.

Section ____.23 Reasonable and Simple Methods of Opting Out

Proposed paragraph (a) sets forth reasonable and simple methods of opting out. These examples generally track the examples of reasonable opt out means from section 7(a)(2)(ii) of the GLB Act privacy regulations with certain revisions to give effect to Congress's mandate that methods of opting out be simple. For simplicity, the example in paragraph (a)(2) contemplates including a self-addressed envelope with the reply form and opt out notice. In addition, the Agencies contemplate that a toll-free telephone number would be adequately designed and staffed to enable consumers to opt out in a single phone call.

Proposed paragraph (b) sets forth methods of opting out that are not reasonable and simple. Such methods include requiring the consumer to write a letter to the institution or to call or write to obtain an opt out form rather than including it with the notice. In addition, a consumer who agrees to receive the opt out notice in electronic form only, such as by electronic mail or a process at a Web site, should be allowed to opt out by the same or a substantially similar electronic form and should not be required to opt out solely by telephone or paper mail.

Section ____.24 Delivery of Opt Out Notices

Proposed paragraph (a) provides that an institution must deliver an opt out notice so that each consumer can reasonably be expected to receive actual notice. For opt out notices delivered electronically, the notices may be delivered either in accordance with the electronic disclosure provisions in this subpart or in accordance with the E-Sign Act. For example, the institution may e-mail its notice to a consumer who has agreed to the electronic delivery of information or provide the notice on its Internet Web site for the consumer who obtains a product or service electronically from that Web site.

As indicated by the examples provided in proposed paragraph (b), the standard described in paragraph (a) is a lesser standard than actual notice. For instance, if a person subject to the rule mails a printed copy of its notice to the last known mailing address of a consumer, the person has met its obligation even if the consumer has changed addresses and never receives the notice.

Several commenters on the October 2000 proposal sought clarification of the acknowledgement of receipt reference in the electronic delivery example in proposed paragraph (b)(1)(iii), suggesting that it would be inconsistent with the E-Sign Act and beyond the scope of the Agencies' interpretive authority. As discussed above with respect to the requirement in proposed § ____.22 to provide a reasonable opportunity to opt out, the current proposal retains the acknowledgement reference. This reference is consistent with an example in the GLB Act privacy regulations and the Agencies' determination that electronic delivery of the FCRA opt out notices would not require consumer consent in accordance with E-Sign, because nothing in section 624 of the Act requires that the notice be provided in writing. Moreover, this reference is contained in an example, thus persons subject to the rule retain flexibility to determine the method of delivery that will provide a reasonable expectation of actual notice.

Proposed paragraph (c) permits a person subject to this rule to provide a joint opt out notice with one or more of its affiliates that are identified in the notice, so long as the notice is accurate with respect to each affiliate jointly issuing the notice. A joint notice does not have to list each affiliate participating in the joint notice by its name. If each affiliate shares a common name, such as ''ABC,'' then the joint notice may state that it applies to ''all institutions with the ABC name'' or ''all affiliates in the ABC family of companies.'' If, however, an affiliate does not have ABC in its name, then the joint notice must separately identify each family of companies with a common name or the institution.

Proposed paragraph (d)(1) sets out rules that apply when two or more consumers jointly obtain a product or service from a person subject to this rule (referred to in the proposed regulation as joint consumers), such as a joint checking account. For example, a person subject to this rule may provide a single opt out notice to joint accountholders. The notice must indicate whether the person will consider an opt out by a joint accountholder as an opt out by all of the associated accountholders, or whether each accountholder may opt out separately. The person may not require all accountholders to opt out before honoring an opt out direction by one of the joint accountholders. Paragraph (d)(2) gives examples of these rules.

Proposed paragraph (d)(1)(vii) and the example in paragraph (d)(2)(iii) address the situation where only one of two joint consumers has opted out. Those paragraphs are derived from similar provisions in the GLB Act privacy regulations. Because section 624 of the

FCRA deals with the use of information for marketing by affiliates, rather than the sharing of information among affiliates, comment is requested on whether information about a joint account should be allowed to be used for making solicitations to a joint consumer who has not opted out.

Section ____.25 Duration and Effect of Opt Out

Proposed § ____.25 addresses the duration and effect of the consumer's opt out election. Proposed paragraph (a) provides that the consumer's election to opt out shall be effective for the opt out period, which is a period of at least 5 years, beginning as soon as reasonably practicable after the consumer's opt out election is received. Nothing in this paragraph limits the ability of affiliated persons to set an opt out period longer than 5 years, including an opt out period that does not expire unless revoked by the consumer. No opt out period, however, may be less than 5 years. In addition, if a consumer elects to opt out every year, a new opt out period of at least 5 years begins upon receipt of each successive opt out election.

Proposed paragraph (b) provides that a receiving affiliate may not make or send solicitations to a consumer during the opt out period based on eligibility information it receives from an affiliate, except as provided in the exceptions in § ____.20(c) or if the opt out is revoked by the consumer. Under this paragraph, the opt out is tied to the consumer, not to the information. Thus, if a consumer initially elects to opt out, but does not extend the opt out upon expiration of the opt out period, a receiving affiliate may use all eligibility information it has received about the consumer from its affiliate, including eligibility information that it received during the opt out period. However, if the consumer subsequently opts out again some time after the initial opt out period has lapsed, a receiving affiliate may not use any eligibility information about the consumer it has received from an affiliate on or after the mandatory compliance date for the regulations under subpart C, including information it received during the period in which no opt out election was in effect.[10] Proposed paragraph (c) clarifies that a consumer may opt out at any time. Thus, even if the consumer did not opt out in response to the initial opt out notice or if the consumer's election to opt out is not prompted by an opt out notice, a consumer may still opt out. Regardless of when the consumer opts out, the opt out period must be effective for an opt out period of at least 5 years.

Proposed paragraph (d) describes how the termination of a consumer relationship affects the consumer's opt out. Specifically, if a consumer's relationship with an institution terminates for any reason when a consumer's opt out election is in force, the opt out will continue to apply indefinitely, unless revoked by the consumer.

Section ____.26 Extension of Opt Out

Proposed § ____.26 describes the procedures for extension of an opt out. Proposed paragraph (a) provides that a receiving affiliate may not make or send solicitations to the consumer after the expiration of the opt out period based on eligibility information it receives or has received from an affiliate, unless the person responsible for providing the initial opt out notice, or its successor, has given the consumer an extension notice and a reasonable opportunity to extend the opt out, and the consumer does not extend the opt out. If an extension notice is not provided to the consumer, the opt out period continues indefinitely. The requirement to provide an extension notice also applies when a consumer fails to opt out initially, but at a subsequent point in time informs the institution of his or her decision to opt out, which would be effective for a period of at least 5 years. The consumer may extend the opt out at the expiration of each successive opt out period. Paragraph (b) also provides that each opt out extension must comply with § ____.25(a), which means that it must be effective for a period of at least 5 years.

Proposed paragraph (c) addresses the contents of an extension notice. A notice under paragraph (c) must be clear and conspicuous, and concise. Paragraph (c) provides some flexibility in the design and contents of the notice. Under one approach, the notice must accurately disclose the same items required to be disclosed in the initial opt out notice under § ____.21(a), along with a statement explaining that the consumer's prior opt out has expired or is about to expire, as applicable, and that if the consumer wishes to keep the consumer's opt out election in force, the consumer must opt out again. Under another approach, the extension notice would provide: (1) That the consumer previously elected to limit an affiliate from using eligibility information about the consumer that it obtains from the communicating affiliate to make or send solicitations to the consumer; (2) that the consumer's election has expired or is about to expire, as applicable; (3) that the consumer may elect to extend the consumer's previous election; and (4) a reasonable and simple method for the consumer to opt out. The Agencies propose to give institutions the flexibility to decide which of these notices best meets their needs.

Institutions do not need to provide extension notices if they treat the consumer's opt out election as valid in perpetuity, unless revoked by the consumer. Comment is requested on whether institutions plan to limit the duration of the opt out or not, and on the relative burdens and benefits of the two approaches.

Proposed paragraph (d) addresses the timing of the extension notice and provides that an extension notice can be given to the consumer either a reasonable period of time before the expiration of the opt out period, or any time after the expiration of the opt out period but before solicitations that would have been prohibited by the expired opt out are made to the consumer. Providing the extension notice a reasonable period of time before the expiration of the opt out period is appropriate to facilitate the smooth transition of consumers that choose to change their election.

An extension notice given too far in advance of the expiration of the opt out period, however, may be confusing to consumers. The Agencies do not propose to set a fixed time for what would constitute a reasonable period of time before the expiration of the opt out period to send an extension notice, because a reasonable period of time may depend upon the amount of time afforded to the consumer for a reasonable opportunity to opt out, the amount of time necessary to process opt outs, and other factors. Nevertheless, providing an extension notice on or with the last annual privacy notice required by the GLB Act privacy provisions sent to the consumer before the expiration of the opt out period shall be deemed reasonable in all cases. Proposed paragraph (e) makes clear that sending an extension notice to the consumer before the expiration of the opt out period does not shorten the 5-year opt out period.

Including an affiliate marketing opt out notice or an extension notice on an initial or annual notice under the GLB Act raises special issues, because GLB Act notices typically state that the consumer does not need to opt out again if the consumer previously opted out.

[10] Section 624(a)(5) of the FCRA contains a non-retroactivity provision, which provides that nothing shall prohibit the use of information to send a solicitation to a consumer if such information was received prior to the date of which persons are required to comply with the regualtions implementing section 624.

This statement would be accurate if the institution and its affiliates choose to make the affiliate marketing opt out effective in perpetuity. However, if the opt out period is limited to a defined period of 5 years or more, such a statement would not be accurate with respect to the extension notice, and the notice would have to make clear to the consumer the necessity of opting out again in order to extend the opt out.

Section ____.27 Consolidated and Equivalent Notices

Proposed §____.27 implements section 624(b) of the Act, and provides that a notice required by this subpart may be coordinated and consolidated with any other notice or disclosure required to be issued under any other provision of law, including but not limited to the notice described in section 603(d)(2)(A)(iii) of the Act and the notice required by title V of the GLB Act. A notice or other disclosure that is equivalent to the notice required by this subpart, and that is provided to a consumer together with disclosures required by any other provision of law, shall satisfy the requirements of this subpart.

Comment is solicited on whether the affiliate marketing notice will be consolidated with the GLB Act privacy notice or the affiliate sharing opt out notice under section 603(d)(2)(A)(iii) of the FCRA, whether the Agencies have provided sufficient guidance on consolidated notices, and whether consolidation would be helpful to consumers.

Effective Date

Consistent with the requirements of section 624 of the FACT Act, the proposed regulations will become effective 6 months after the date on which they are issued in final form. Comment is requested on whether there is any need to delay the compliance date beyond the effective date to permit institutions to incorporate the affiliate marketing notice into their next annual GLB Act privacy notice.

Appendix A

The Agencies are proposing model forms to illustrate by way of example how institutions may comply with the notice and opt out requirements of section 624 and the proposed regulations. Appendix A includes three proposed model forms. Model Form A–1 is a proposed form of an initial opt out notice. Model Form A–2 is a proposed form of an extension notice; it may be used when the consumer's prior opt out has expired or is about to expire. Model Form A–3 is a proposed form that institutions may use if they offer consumers a broader right to opt out of marketing than is required by law.

Use of the model forms is not mandatory. Institutions have the flexibility to use or not use the model forms, or to modify the forms, so long as the requirements of the regulation are met. For example, although Model Forms A–1 and A–2 use 5 years as the duration of the opt out period, institutions are free to choose an opt out period of longer than 5 years and substitute the longer time period in the opt out notices. Alternatively, institutions may choose to treat the consumer's opt out as effective in perpetuity and thereby omit any reference to the limited duration of the opt out period or the right to extend the opt out in the initial opt out notice.

Each of the proposed model forms is designed as a stand-alone form. The Agencies anticipate that some institutions may want to combine the opt out form with their GLB Act privacy notice. If so combined, the Agencies expect that institutions would integrate the affiliate marketing opt out notice with other required disclosures and avoid repetition of certain information, such as the methods for opting out. Developing a model form that combines various opt out notices, however, is beyond the scope of this rulemaking.

The proposed model forms have been designed to convey the necessary information to consumers as simply as possible. The Agencies have tested the proposed model forms using two widely available readability tests, the Flesch reading ease test and the Flesch-Kincaid grade level test, each of which generates a score.[11] Proposed Model Form A–1 has a Flesch reading ease score of 53.7 and a Flesch-Kincaid grade level score of 9.9. Proposed Model Form A–2 has a Flesch reading ease score of 57.5 and a Flesch-Kincaid grade level score of 9.6. Proposed Model Form A–3 has a Flesch reading ease score of 69.9 and a Flesch-Kincaid grade level score of 6.7. Ideally, the Agencies would test the proposed model forms both alone and in conjunction with other opt out notices under the FCRA and GLB Act. Consumer testing may result in better, more readable notices. However, such testing is unlikely to be completed before this rule is issued in final form.

The Agencies recognize the benefits of working with communications experts and conducting consumer testing in developing appropriate language for a consumer opt out notice. Comment is solicited on the form and content of the proposed model forms based on commenters' work with communications experts and experience with consumer testing. Comment is also requested on whether institutions would combine the affiliate marketing notice with other opt out notices or issue a separate affiliate marketing opt out notice, and how those two approaches may affect consumer comprehension of the notices and their rights. In developing a final rule, the Agencies will carefully consider any consumer testing that may suggest ways to improve the proposed model forms, including efforts by consumer groups and industry, as well as the Agencies' own initiative to consider alternative forms of privacy notices under the GLB Act. *See* 68 FR 75164 (Dec. 30, 2003).

[11] The Flesch reading ease test generates a score between zero and 100, where the higher score correlates with improved readability. The Flesch-Kincaid grade level test generates a numerical assessment of the grade-level at which the text is written.

IV. Regulatory Analysis

Paperwork Reduction Act

Request for Comment on Proposed Information Collection

In accordance with the requirements of the Paperwork Reduction Act of 1995, the Agencies may not conduct or sponsor, and the respondent is not required to respond to, an information collection unless it displays a currently valid Office of Management and Budget (OMB) control number. The Agencies are currently requesting OMB approval of this information collection.

Comments are invited on:

(a) Whether the collection of information is necessary for the proper performance of the Agency's functions, including whether the information has practical utility;

(b) The accuracy of the estimates of the burden of the information collection, including the validity of the methodology and assumptions used;

(c) Ways to enhance the quality, utility, and clarity of the information to be collected;

(d) Ways to minimize the burden of the information collection on respondents, including through the use of automated collection techniques or other forms of information technology; and

(e) Estimates of capital or start up costs and costs of operation, maintenance, and purchase of services to provide information.

At the end of the comment period, the comments and recommendations received will be analyzed to determine whether the information collections should be modified. Any material modifications will be submitted to OMB

for review and approval. All comments will become a matter of public record.

Comments should be addressed to:

OCC: Public Information Room, Office of the Comptroller of the Currency, 250 E Street, SW., Mail stop 1–5, Attention: Docket 04–16, Washington, DC 20219; fax number (202) 874–4448; Internet address: *regs.comments@occ.treas.gov.* Due to delays in paper mail delivery in the Washington area, commenters are encouraged to submit their comments by fax or e-mail. You can make an appointment to inspect the comments at the Public Information Room by calling (202) 874–5043.

Board: Comments should refer to Docket No. R–1203 and may be mailed to Ms. Jennifer J. Johnson, Secretary, Board of Governors of the Federal Reserve System, 20th Street and Constitution Avenue, NW., Washington, DC 20551. However, because paper mail in the Washington area and at the Board of Governors is subject to delay, please consider submitting your comments by e-mail to *regs.comments@federalreserve.gov,* or faxing them to the Office of the Secretary at (202) 452–3819 or (202) 452–3102. Members of the public may inspect comments in Room MP–500 between 9 a.m. and 5 p.m. on weekdays pursuant to 261.12, except as provided in 261.14, of the Board's Rules Regarding Availability of Information, 12 CFR 261.12 and 261.14.

FDIC: Leneta Gregorie, Legal Division, Room MB–3064, Federal Deposit Insurance Corporation, 550 17th Street, NW., Washington, DC 20429. All comments should refer to the title of the proposed collection. Comments may be hand-delivered to the guard station at the rear of the 17th Street Building (located on F Street), on business days between 7 a.m. and 5 p.m., Attention: Comments/Legal Division, Federal Deposit Insurance Corporation, 550 17th Street, NW., Washington, DC 20429. Comments may also be submitted electronically through the FDIC's Web site, *http://fdic.gov/regulations/laws/federal/propose.html,* or by e-mail, *Comments@FDIC.gov.*

OTS: Send comments, referring to the collection by title of the proposal, to Information Collection Comments, Chief Counsel's Office, Office of Thrift Supervision, 1700 G Street, NW., Washington, DC 20552; send a facsimile transmission to (202) 906–6518; or send an e-mail to *infocollection.comments@ots.treas.gov.* OTS will post comments and the related index on the OTS internet site at *www.ots.treas.gov.* In addition, interested persons may inspect the comments at the Public Reading Room, 1700 G Street, NW., by appointment. To make an appointment, call (202) 906–5922, send an e-mail to *publicinfo@ots.treas.gov,* or send a facsimile transmission to (202) 906–7755.

NCUA: Joseph F. Lackey, the Office of Information and Regulatory Affairs, OMB, Attn: Joseph F. Lackey, Room 10226, New Executive Office Building, Washington, DC 20503. Please send a copy to the attention of Becky Baker, Secretary of the Board, at NCUA.

Title of Information Collection:

OCC: Comptroller's Licensing Manual (Formerly Comptroller's Corporate Manual).

Board: Information Collection Requirements in Connection with Regulation V (Fair Credit Reporting Act).

FDIC: Affiliate Marketing Disclosures/Consumer Opt-Out Notices.

OTS: Fair Credit Reporting Affiliate Marketing Regulations.

NCUA: Information Collection Requirements in Connection with Fair Credit Reporting Act Regulations.

Frequency of Response: On occasion.

Affected Public:

OCC: National banks, Federal branches and agencies of foreign banks, and their respective operating subsidiaries that are not functionally regulated within the meaning of section 5(c)(5) of the Bank Holding Company Act of 1956, as amended (12 U.S.C. 1844(c)(5)).

Board: State member banks, branches and agencies of foreign banks (other than federal branches, Federal agencies, and insured State branches of foreign banks), commercial lending companies owned or controlled by foreign banks, Edge and agreement corporations, and bank holding companies and affiliates of such holding companies (other than depository institutions and consumer reporting agencies).

FDIC: Insured state nonmember banks.

OTS: Savings associations and Federal savings association operating subsidiaries that are not functionally regulated within the meaning of section 5(c)(5) of the Bank Holding Company Act of 1956, as amended (12 U.S.C. 1844(c)(5)).

NCUA: Federal credit unions with CUSO affiliates.

Abstract: The information collections in this proposal involve disclosure and reporting requirements associated with section 624 of the FCRA. This section generally provides that, if a person shares certain information about a consumer with an affiliate and the affiliate intends to use that information to make or send solicitations to the consumer about its products or services, then the person must give the consumer notice (§ ____.21(a)) and a reasonable opportunity to opt out (§ ____.23) of such use. A person's obligations to provide a consumer with a notice and a right to opt out applies to the use of ''eligibility information,'' as defined in the proposed rule. The consumer must opt out in order to prevent an affiliate from making solicitations based on such information. If a consumer elects to opt out and the person has notified the consumer that the election is effective for only five years or such longer period as established by the person, then (prior to the expiration of the opt out period or any time after the expiration of the opt out period but before any affiliate makes or sends solicitations that would have been prohibited by the consumer's prior decision to opt out) the person must send the consumer an extension notice and provide the consumer with a reasonable opportunity to opt out (§ ____.26(c)). At that time, the consumer can again choose to opt out and prohibit the use of ''eligibility information'' for marketing solicitations.

In order to help minimize the paperwork burden imposed on covered institutions, the Agencies have provided model disclosures in Appendix A that would apply to some of the examples mentioned in the proposed rule. The proposed rule contains provisions that would permit the use of coordinated and consolidated notices between affiliates, as provided under section 214. The proposed rule also facilitates compliance by allowing a covered entity to combine its affiliate marketing opt-out notice with other notices required by law, as provided under section 214.

Estimated Burden: The Agencies estimate that the average amount of time for a person to prepare an initial notice as required under the proposal and distribute the notice to consumers will be approximately 18 hours. Although the amount of time needed for any particular person that actually would be subject to the requirements as proposed may be higher or lower, the Agencies believe that this average figure is a reasonable estimate for several reasons. First, a significant number of persons do not have affiliates, and are not covered by section 214 of the FACT Act or the proposed rule. Second, persons that do have affiliates may choose not to engage in the sharing of certain information or marketing to consumers covered by section 214 or the proposed rule, as explained in the **SUPPLEMENTARY INFORMATION** section. Finally, in an effort to minimize the compliance costs and burdens for persons, particularly small entities, the proposed rule contains

model disclosures and opt out notices that may be used to satisfy the statutory requirements. The proposed rule gives covered persons flexibility to satisfy the notice and opt out requirement by sending the consumer a freestanding opt out notice or by adding the opt out notice to the privacy notices already provided to consumers in accordance with the provisions of title V of the GLB Act. For covered persons that choose to prepare a freestanding opt out notice, the time necessary to prepare a freestanding opt out notice would be minimal, because those persons could simply copy the model disclosure, making minor adjustments as indicated by the model disclosure. Similarly, for covered persons that choose to incorporate the opt out notice into their GLB Act privacy notices, the time necessary to integrate the model opt out notice into their privacy notices would be minimal.

The Agencies estimate that the average consumer will take approximately 5 minutes to respond to the notice and opt out.

As mentioned above, persons that limit the duration of the opt-out time period must notify the consumer of the upcoming expiration. The Agencies are not estimating burden at this time for the notices of opt out expiration because the minimum effective time period for the opt out is five years. The Agencies will estimate the burden for this requirement when they review the information collection in three years.

OCC:

Number of Respondents: 2,115 National banks and 996,625 Consumers.

Estimated Time per Response: 18 hours, Notice to consumers and 5 minutes, Consumer response to opt out notice.

Total Estimated Annual Burden: 121,122 hours.

Board:

Number of Respondents: 6,738 Financial institutions and 1,598,450 Consumers.

Estimated Time per Response: 18 hours, Notice to consumers and 5 minutes, Consumer response to opt out notice.

Total Estimated Annual Burden: 253,955 hours.

FDIC:

Number of Respondents: 5,318 Financial institutions and 1,088,850 Consumers.

Estimated Time per Response: 18 hours, Notice to consumers and 5 minutes, Consumer response to opt out notice.

Total Estimated Annual Burden: 186,099 hours.

OTS:

Number of Respondents: 916 Financial institutions and 235,200 Consumers.

Estimated Time per Response: 18 hours, Notice to consumers and 5 minutes, Consumer response to opt out notice.

Total Estimated Annual Burden: 36,010 hours.

NCUA:

Number of Respondents: 1,065 Financial institutions and 1,023,693 Consumers.

Estimated Time per Response: 18 hours, Notice to consumers and 5 minutes, Consumer response to opt out notice.

Total Estimated Annual Burden: 104,137 hours.

Regulatory Flexibility Act

OCC: The Regulatory Flexibility Act (5 U.S.C. 601–612) (RFA) requires an agency to either provide an Initial Regulatory Flexibility Analysis with a proposed rule or certify that the proposed rule will not have a significant economic impact on a substantial number of small entities (defined for purposes of the RFA to include banks with assets less than or equal to $150 million).

A. Reasons for Proposed Rule

Section 214 of the FACT Act adds a new section 624 to the FCRA that gives consumers a limited right to restrict a person from using certain information, about the consumer and that is obtained from an affiliate, to make solicitations to that consumer. The statute also requires the OCC, in consultation and coordination with the other financial regulators, to issue regulations in final form implementing section 214 not later than nine months after the date of enactment.

B. Statement of Objectives and Legal Basis

The objectives of the proposed rule are described in the **SUPPLEMENTARY INFORMATION** section. In sum, the objectives are: (1) to implement the general statutory provision giving consumers the right to restrict a person from using certain information, about the consumer and that is obtained from an affiliate, to make solicitations to that consumer and (2) to fulfill the statutory mandate to prescribe regulations to implement section 214. The legal bases for the proposed rule are the National Bank Act found at 12 U.S.C. 1 *et seq.*, 24(Seventh), 481, and 484; the Depository Institutions Deregulation and Monetary Control Act of 1980 found at 12 U.S.C. 93a; the Federal Deposit Insurance Act found at 12 U.S.C. 1818; and the Fair Credit Reporting Act found at 15 U.S.C. 1681 *et seq.*

C. Description of Small Entities to Which the Rule Will Apply

The proposed rule would apply to 1,220 national banks, Federal branches, and Federal agencies of foreign banks (which include operating subsidiaries thereof that are not functionally regulated within the meaning of section 5(c)(5) of the Bank Holding Company Act of 1956) each with assets of less than or equal to $150 million.

D. Projected Reporting, Recordkeeping and Other Compliance Requirements

Section 214 of the FACT Act generally provides that, if a person shares certain information about a consumer with an affiliate, the affiliate may not use that information to make or send solicitations to the consumer about its products or services, unless the consumer is given notice and a reasonable opportunity to opt out of such use of the information and the consumer does not opt out. The notice and opt out provisions do not apply in certain circumstances such as when an institution has a pre-existing relationship with a consumer, uses a consumer's information in response to a communication initiated by the consumer; or uses a consumer's information in response to solicitations authorized or requested by the consumer.

The proposed rule sets forth the duties on two groups of covered institutions: (1) Institutions that communicate their consumers' eligibility information to their affiliates for use in marketing; and (2) the affiliates that receive such information (''the receiving affiliates''). A person that communicates eligibility information to its affiliates and has a pre-existing business relationship with the consumer will be responsible for providing the consumer with an opt out notice, as specified in the proposed rule. The receiving affiliates must establish systems to prevent solicitations from being sent to consumers who have opted out, as specified in the proposed rule. A system must also be established to ensure that receiving affiliates are informed about consumer opt outs.

Affiliates that communicate or receive eligibility information will likely need the advice of legal counsel to ensure that they comply with the proposed rule, and may also require computer programming changes and additional staff training, which may entail some training costs. Based on the annual

estimate of burden cost for the privacy notices required by regulations implementing title V of the GLB Act, the OCC estimates that this proposed regulation, which the FACT–ACT requires to be issued, would have associated implementation costs of $ 3,998 for each small institution. This estimate was calculated by the following method:

Initial Notice to Consumers Requirement: 1,220 small banks × 18 average hours per response = 21,960 burden hours.

Subsequent Notice to Customers Requirement: 1,220 small banks × 1.6 average hours per response (divided by 5 to reflect the ability of a person under the proposal to restrict the opt out to 5 years) = 1,952 burden hours.

Costs to Institutions to Record Responses, including training, systems changes, etc.: 96,390 consumer respondents (481,950 consumer respondents in privacy rules × .20 reflecting the number of these consumers served by smaller institutions) × .5 average hours per response = 48,195.

Total Burden Hours: 72,107.

The OCC estimates the cost of the hour burden (by wage rate category) for small national banks to be as follows:

Clerical ($25/hour): 25% × 72,107 @ $25 = $ 450,669.

Managerial/Technical ($55/hour): 40% × 72,107 @ $55 = $ 1,586,354.

Senior Management ($100/hour): 25% × 72,107 @ $100 = $ 1,802,675.

Legal Counsel ($144/hour): 10% × 72,107 @ $144 = $ 1,038,341.

Total Costs: $ 4,878,039.

Total Costs/number of small national banks = $ 4,878,039/1220 = $ 3,998 per institution.

The OCC believes that the proposal's burden cost per small institution will likely be lower because institutions that are covered by the proposal have implemented, and are already familiar with, similar notice and opt out procedures. Thus, we expect there to be certain experience efficiencies with the implementation process that will lower the annual burden costs for small institutions.

The OCC seeks information and comment on any costs, such as training costs, compliance requirements, or changes in operating procedures arising from the application of the proposed rule in addition to, or which may differ from, those arising from the application of the statute generally.

E. Identification of Duplicative, Overlapping, or Conflicting Federal Rules

The OCC is unable to identify any statutes or rules, which would overlap or conflict with the proposed regulation. The OCC seeks comment and information about any such statutes or rules, as well as any other State, local, or industry rules or policies that require a covered institution to implement business practices that would comply with the requirements of the proposed rule.

F. Discussion of Significant Alternatives

Section 214 of the FACT Act generally provides that, if a person shares certain information about a consumer with an affiliate, the affiliate may not use that information to make or send solicitations to the consumer about its products or services, unless the consumer is given notice and a reasonable opportunity to opt out of such use of the information and the consumer does not opt out. Section 214 provides that the notice and opt out provisions do not apply in certain circumstances as discussed in the **SUPPLEMENTARY INFORMATION** section. As required by the FACT Act, the proposed rule applies to all covered institutions, regardless of the size of the institution. One approach to minimizing the burden on small entities would be to provide a specific exemption for small institutions. The OCC has no authority under section 214 of the FACT Act to grant an exception that would remove small institutions from the scope of the rule.

The proposed rule does, however, provide substantial flexibility so that any bank, regardless of size, may tailor its practices to its individual needs. For example, to minimize the burden the proposal would permit institutions to coordinate and consolidate notice and opt out communications to consumers with any other notice that is required to be issued by applicable law. In addition, the Agencies have included model forms for opt out notices that the Agencies would deem to comply with the requirements of the proposed regulation and that institutions could customize to suit their needs. Furthermore, the proposal would permit institutions to offer consumers a permanent opt out from the sharing of information for making or sending solicitations among affiliates, which would reduce institutional recordkeeping requirements.

The OCC welcomes comments on any significant alternatives, consistent with the mandate in section 214 to restrict the use of certain information for marketing purposes that would minimize the impact of the proposed rule on small entities.

Board: Subject to certain exceptions, the Regulatory Flexibility Act (5 U.S.C. 601–612) (RFA) requires an agency to publish an initial regulatory flexibility analysis with a proposed rule whenever the agency is required to publish a general notice of proposed rulemaking for a proposed rule. The Supplementary Information above describes the reasons why the regulation is being proposed and the objectives and the legal basis of the proposed rule. The **SUPPLEMENTARY INFORMATION** section also describes the compliance requirements of the proposed rule and identifies other relevant Federal rules which may duplicate or overlap with the proposed rule. The Board, in connection with its initial regulatory flexibility analysis, requests public comment in the following areas.

A. Reasons for the Proposed Rule

Section 214 of the FACT Act (which adds a new section 624 to the FCRA) generally prohibits a person from using certain information received from an affiliate to make a solicitation for marketing purposes to a consumer, unless the consumer is given notice and an opportunity and simple method to opt out of the making of such solicitations. Section 214 also requires the Agencies and the Federal Trade Commission, in consultation and coordination with each other, to issue regulations implementing the section that are as consistent and comparable as possible.

B. Statement of Objectives and Legal Basis

The Supplementary Information above contains this information. The legal basis for the proposed rule is section 214 of the FACT Act.

C. Description of Small Entities to Which the Rule Applies

The proposed rule would apply to all banks that are members of the Federal Reserve System (other than national banks), branches and Agencies of foreign banks (other than Federal branches, Federal Agencies, and insured State branches of foreign banks), commercial lending companies owned or controlled by foreign banks, organizations operating under section 25 or 25A of the Federal Reserve Act (12 U.S.C. 601 *et seq.,* and 611 *et seq.*), bank holding companies and affiliates (other than depository institutions and consumer reporting agencies) of such holding companies. The Board's

proposed rule will apply to the following institutions (numbers approximate): State member banks (932), bank holding companies (5,152), holding company non-bank subsidiaries (2,131), U.S. branches and agencies of foreign banks (289), Edge and agreement corporations (75), for a total of approximately 8,579 institutions. The Board estimates that over 5,000 of these institutions could be considered small institutions with assets less than $150 million.

D. Projected Reporting, Recordkeeping and Other Compliance Requirements

Section 214 of the FACT Act (which adds a new section 624 to the FCRA) generally provides that, if a person shares certain information about a consumer with an affiliate, the affiliate may not use that information to make or send solicitations to the consumer about its products or services, unless the consumer is given notice and a reasonable opportunity to opt out of such use of the information and the consumer does not opt out. The notice and opt out provisions do not apply in certain circumstances.

The proposed rule sets forth the duties on two groups of covered institutions: (1) Institutions that communicate their consumers' eligibility information to their affiliates for use in marketing; and (2) the affiliates that receive such information (''the receiving affiliates''). A person that communicates eligibility to its affiliates about a consumer will be responsible for providing the consumer with an opt out notice, as specified in the rule. The receiving affiliates must not make or send solicitations to consumers who have opted-out, as specified in the rule. Affiliates that communicate or receive eligibility information will likely need the advice of legal counsel to ensure that they comply with the rule, and may also require computer programming changes and additional staff training.

As noted in the burden estimate discussion in the Paperwork Reduction Act section, the Board believes that the costs of complying with the proposed rule would be minimal. Small institutions that do not have affiliates would not have to comply with the proposed rule. Small institutions that have affiliates may choose not to engage in any activity that would require compliance with the proposed rule. For small institutions required to comply with the proposed rule, small institutions may use the proposed model disclosures and opt out notices to minimize the cost of compliance.

The Board seeks information and comment on any costs, compliance requirements, or changes in operating procedures arising from the application of the proposed rule to small institutions.

E. Identification of Duplicative, Overlapping, or Conflicting Federal Rules

With the exception of the opt out for information other than transaction or experience information in section 603(d)(2)(A)(iii), the Board is unable to identify any federal statutes or regulations that would duplicate, overlap, or conflict with the proposed rule. The overlap of the proposed rule and section 603(d)(2)(A)(iii) is discussed in the Supplementary Information. The Board seeks comment regarding any other statues or regulations, including State or local statutes or regulations, that would duplicate, overlap, or conflict with the proposed rule.

F. Discussion of Significant Alternatives

Section 214 of the FACT Act (which adds a new section 624 to the FCRA) generally provides that, if a person shares certain information about a consumer with an affiliate, the affiliate may not use that information to make or send solicitations to the consumer about its products or services, unless the consumer is given notice and a reasonable opportunity to opt out of such use of the information and the consumer does not opt out. The notice and opt out provisions do not apply in certain circumstances. The proposed rule applies to all covered institutions as specified in the rule, regardless of the size of the institution.

The Board welcomes comments on any significant alternatives, consistent with the mandate in section 214 to restrict the use of certain information for marketing purposes, that would minimize the impact of the proposed rule on small entities.

FDIC: Subject to certain exceptions, the Regulatory Flexibility Act (5 U.S.C. 601–612) (RFA) requires an agency to publish an initial regulatory flexibility analysis with a proposed rule whenever the agency is required to publish a general notice of proposed rulemaking for a proposed rule. The Supplementary Information above describes the reasons why the regulation is being proposed and the objectives and the legal basis of the proposed rule. The **SUPPLEMENTARY INFORMATION** section also describes the compliance requirements of the proposed rule and identifies other relevant Federal rules which may duplicate or overlap with the proposed rule. The FDIC, in connection with its initial regulatory flexibility analysis, requests public comment in the following areas.

A. Reasons for the Proposed Rule

Section 214 of the FACT Act (which adds a new section 624 to the FCRA) generally prohibits a person from using certain information received from an affiliate to make a solicitation for marketing purposes to a consumer, unless the consumer is given notice and an opportunity and simple method to opt out of the making of such solicitations. Section 214 also requires the Agencies and the Federal Trade Commission, in consultation and coordination with each other, to issue regulations implementing the section that are as consistent and comparable as possible.

B. Statement of Objectives and Legal Basis

The Supplementary Information above contains this information. The legal basis for the proposed rule is section 214 of the FACT Act.

C. Description of Small Entities to Which the Rule Applies

The proposed rule would apply to all banks that are insured by the FDIC (other than District Banks and members of the Federal Reserve System) insured State branches of foreign banks and any subsidiaries and affiliates of such entities; and other entities or persons with respect to which the FDIC may exercise its enforcement authority under any provision of law. For purposes of this proposed rule, a subsidiary does not include a broker, dealer, person providing insurance, investment company, and investment advisor. The proposed rule would apply to all State non-member banks, approximately 3,700 of which are small entities as defined by the RFA.

D. Projected Reporting, Recordkeeping and Other Compliance Requirements

Section 214 of the FACT Act (which adds a new section 624 to the FCRA) generally provides that, if a person shares certain information about a consumer with an affiliate, the affiliate may not use that information to make or send solicitations to the consumer about its products or services, unless the consumer is given notice and a reasonable opportunity to opt out of such use of the information and the consumer does not opt out. The notice and opt out provisions do not apply in certain circumstances.

The proposed rule sets forth the duties of two groups of covered institutions: (1) Institutions that

communicate their consumers' eligibility information to their affiliates for use in marketing; and (2) the affiliates that receive such information (''the receiving affiliates''). A person that communicates eligibility to its affiliates about a consumer will be responsible for providing the consumer with an opt out notice, as specified in the rule. The receiving affiliates must not make or send solicitations to consumers who have opted-out, as specified in the rule. Affiliates that communicate or receive eligibility information will likely need the advice of legal counsel to ensure that they comply with the rule, and may also require computer programming changes and additional staff training.

The FDIC believes that the costs of complying with the proposed rule would be minimal. Small institutions that do not have affiliates would not have to comply with the proposed rule. Small institutions that have affiliates may choose not to engage in any activity that would require compliance with the proposed rule. Those small institutions required to comply with the proposed rule may use the proposed model disclosures and opt out notices to minimize the cost of compliance.

The FDIC seeks information and comment on any costs, compliance requirements, or changes in operating procedures arising from the application of the proposed rule to small institutions.

E. Identification of Duplicative, Overlapping, or Conflicting Federal Rules

With the exception of the opt out for information other than transaction or experience information in section 603(d)(2)(A)(iii), the FDIC is unable to identify any federal statutes or regulations that would duplicate, overlap, or conflict with the proposed rule. The overlap of the proposed rule and section 603(d)(2)(A)(iii) is discussed in the Supplementary Information. The FDIC seeks comment regarding any other statues or regulations, including State or local statutes or regulations, that would duplicate, overlap, or conflict with the proposed rule.

F. Discussion of Significant Alternatives

Section 214 of the FACT Act (which adds a new section 624 to the FCRA) generally provides that, if a person shares certain information about a consumer with an affiliate, the affiliate may not use that information to make or send solicitations to the consumer about its products or services, unless the consumer is given notice and a reasonable opportunity to opt out of such use of the information and the consumer does not opt out. The notice and opt out provisions do not apply in certain circumstances. The proposed rule applies to all covered institutions as specified in the rule, regardless of the size of the institution.

The FDIC welcomes comments on any significant alternatives, consistent with the mandate in section 214 to restrict the use of certain information for marketing purposes, that would minimize the impact of the proposed rule on small entities.

OTS: The Regulatory Flexibility Act (5 U.S.C. 601–612) (RFA) requires an agency to either provide an Initial Regulatory Flexibility Analysis with a proposed rule or certify that the proposed rule will not have a significant economic impact on a substantial number of small entities (defined for purposes of the RFA to include savings associations with assets of $150 million or less).

A. Reasons for Proposed Rule

Section 214 of the FACT Act adds a new section 624 to the FCRA that generally prohibits a person from using certain information received from an affiliate to make a solicitation for marketing purposes to a consumer, unless the consumer is given notice of the information sharing for marketing purposes and a simple method to opt out of the solicitations. Section 214 requires the Federal banking agencies, the NCUA, the FTC, and the SEC, in consultation and coordination with each other, to issue implementing regulations that, to the extent possible, are consistent and comparable with the regulations prescribed by each other agency.

B. Statement of Objectives and Legal Basis

The objectives of the proposed rule are described in the **SUPPLEMENTARY INFORMATION** section. In sum, the objectives are: (1) To implement the general statutory provision giving consumers the right to restrict a person from using certain information about the consumer that is obtained from an affiliate to make solicitations to that consumer and (2) to fulfill the statutory mandate to prescribe regulations to implement section 214. The legal bases for the proposed rule are (1) the Home Owners' Loan Act found at 12 U.S.C. 1462a, 1463, 1464, and 1467a; (2) the Federal Deposit Insurance Act found at 12 U.S.C. 1818; and (3) the Fair Credit Reporting Act found at 15 U.S.C. 1681 *et seq.*

C. Description of Small Entities to Which the Rule Will Apply

The proposed rule would apply to all savings associations. In accordance with 12 CFR 559.3(h)(1), it would apply to Federal savings association operating subsidiaries as well.

Small savings associations are generally defined, for Regulatory Flexibility Act purposes, as those with assets of $150 million or less. 13 CFR 121.201 (2003). OTS calculates (numbers approximate) that of the 917 savings associations, a maximum of 476 of these are small savings associations.

D. Projected Reporting, Recordkeeping, and Other Compliance Requirements

Section 214 of the FACT Act generally provides that, if a person shares certain information about a consumer with an affiliate, the affiliate may not use that information to make or send solicitations to the consumer about its products or services, unless the consumer is given notice and a reasonable opportunity to opt out of such use of the information and the consumer does not opt out. The notice and opt-out provisions do not apply in certain circumstances such as when an institution has a pre-existing relationship with a consumer, uses a consumer's information in response to a communication initiated by the consumer, or uses a consumer's information in response to solicitations authorized or requested by the consumer.

The proposed rule sets forth the duties on two groups of covered institutions: (1) Institutions that communicate their consumers' eligibility information to their affiliates for use in marketing and (2) the affiliates that receive such information (''the receiving affiliates''). A person that communicates eligibility information to its affiliates and has a pre-existing business relationship with the consumer will be responsible for providing the consumer with an opt-out notice as specified in the rule. The receiving affiliates must establish systems to prevent solicitations from being sent to consumers who have opted out, as specified in the proposed rule. Implicitly, a system must exist to ensure that receiving affiliates are informed of any opt-outs.

Affiliates that communicate or receive eligibility information will likely need the advice of legal counsel to ensure that they comply with the proposed rule and may also require computer programming changes and additional staff training, which may entail some training costs.

Based in part on the annual estimate of burden cost for the privacy notices required by regulations implementing title V of the GLB Act, OTS estimates that this proposed regulation, which the FACT Act requires to be issued, would have associated implementation costs of $2,286 for each small institution. This estimate was calculated by the following method:

Notice to consumers requirements: 476 small thrifts × 18 average hours per response = 8,568 burden hours.

Subsequent notice to consumers with expired opt-outs requirements: 476 small thrifts × 1.6 average hours per responses (divided by 5 to reflect the ability of a person under the proposal to restrict the opt out to a minimum of 5 years) = 762 burden hours.

Costs to institutions to record consumer responses, including training, systems changes, etc.: 13,510 consumer respondents (67,550 consumer respondents in privacy rules × .20 reflecting the number of these consumers served by smaller institutions) × .5 average hours per response = 6,755 burden hours.

Total Burden Hours: 16,085.

The OTS estimates the cost of the hour burden (by wage rate category) for small thrifts to be as follows:

Clerical ($25/hour): 25% × 16,085 @ $25 = $100,531.

Managerial/Technical ($55/hour): 40% × 16,085 @ $55 = $353,870.

Senior Management ($100/hour): 25% × 16,085 @ $100 = $402,125.

Legal Counsel ($144/hour): 10% × 16,085 @ $144 = $231,624.

Total Costs: $1,088,150.

Total Costs / # of small thrifts = $1,088,150/476 = $2,286.

OTS believes that the proposal's burden cost per small institution will likely be lower because institutions that are covered by the proposal have implemented, and are already familiar with, similar notice and opt-out procedures applicable under other statutes and regulations such as the privacy notices required by regulations implementing title V of the GLB Act. Thus we expect there to be certain experience efficiencies with the implementation process that will lower the annual burden costs for small institutions. Further, institutions can reduce the burden of providing notices every 5 years by allowing longer opt-out periods or eliminate that burden entirely by allowing opt-outs in perpetuity.

OTS seeks information and comment on any costs, such as training costs, compliance requirements, or changes in operating procedures arising from the application of the proposed rule in addition to, or which may differ from, those arising from the application of the statute generally.

E. Identification of Duplicative, Overlapping, or Conflicting Federal Rules

OTS is unable to identify any statutes or rules that would overlap or conflict with the proposed regulation. OTS notes, however, as discussed in the **SUPPLEMENTARY INFORMATION** section, that section 603(d)(2)(A)(iii) of the FCRA provides that a person may communicate ''other'' information—that is, non-transaction or experience information—among its affiliates without becoming a consumer reporting agency if the person has given the consumer a clear and conspicuous notice that such information may be communicated among affiliates and an opportunity to ''opt out'' or direct that the information not be communicated, and the consumer has not opted out. The notice and opt-out provided in section 603(d)(2)(A)(iii) of the FCRA limits the sharing of information among affiliates and was the subject of an October 20, 2000 proposal by the Federal banking agencies. The current proposal addresses a new notice and opt-out provision that applies to the use by affiliates of certain information that they receive from another affiliate to market their products and services to consumers. Although there is a certain degree of overlap between the two opt-outs, the two opt-outs are distinct and serve different purposes. Therefore, nothing in this proposal regarding the opt-out for affiliate marketing supercedes or replaces the affiliate sharing opt-out contained in section 603(d)(2)(A)(iii) of the Act.

OTS seeks comment and information about any such statutes or rules, as well as any other State, local, or industry rules or policies that require a covered institution to implement business practices that would comply with the requirements of the proposed rule.

F. Discussion of Significant Alternatives

Section 214 of the FACT Act generally provides that, if a person shares certain information about a consumer with an affiliate, the affiliate may not use that information to make or send solicitations to the consumer about its products or services, unless the consumer is given notice and a reasonable opportunity to opt out of such use of the information and the consumer does not opt out. Section 214 provides that the notice and opt-out provisions do not apply in certain circumstances as discussed in the **SUPPLEMENTARY INFORMATION** section. As required by the FACT Act, the proposed rule applies to all covered institutions, regardless of the size of the institution.

One approach to minimizing the burden on small entities would be to provide a specific exemption for small institutions. OTS has no authority under section 214 of the FACT Act to grant an exemption that would remove small institutions from the scope of the rule.

The proposed rule does, however, provide substantial flexibility so that any savings association, regardless of size, may tailor its practices to its individual needs. For instance, to minimize the burden the proposal would permit institutions to coordinate and consolidate notice and opt-out communications to consumers with any other notice that applicable law requires. In addition, the Agencies have included model forms for opt-out notices that the Agencies would deem to comply with the requirements of the proposed regulation and that institutions could customize to suit their needs. Furthermore, the proposal would permit institutions to offer consumers a permanent opt-out from the sharing of information for making or sending solicitations among affiliates, which would reduce institutional recordkeeping requirements.

OTS welcomes comments on any significant alternatives, consistent with the mandate in section 214 to restrict the use of certain information for marketing purposes, that would minimize the impact of the proposed rule on small entities.

NCUA: The Regulatory Flexibility Act requires NCUA to prepare an analysis to describe any significant economic impact any proposed regulation may have on a substantial number of small entities (those under $10 million in assets). NCUA, in connection with its initial regulatory flexibility analysis, requests public comment in the following areas.

A. Reasons for the Proposed Rule

Section 214 of the FACT Act (which adds a new section 624 to the FCRA) generally prohibits a person from using certain information received from an affiliate to make a solicitation for marketing purposes to a consumer, unless the consumer is given notice and an opportunity and simple method to opt out of the making of such solicitations. Section 214 also requires the Agencies, the FTC, and the SEC in consultation and coordination with each other, to issue regulations implementing that section.

B. Statement of Objectives and Legal Basis

The Supplementary Information above contains this information. The legal basis for the proposed rule is section 214 of the FACT Act.

C. Description of Small Entities to Which the Rule Applies

The proposed rule would apply to all federally chartered credit unions that have CUSO affiliates, which total approximately 1,065. Approximately 84 of those Federal credit unions could be considered small entities with assets less than $10 million.

D. Projected Reporting, Recordkeeping and Other Compliance Requirements

Section 214 of the FACT Act (which adds a new section 624 to the FCRA) generally provides that, if a person shares certain information about a consumer with an affiliate, the affiliate may not use that information to make or send solicitations to the consumer about its products or services, unless the consumer is given notice and a reasonable opportunity to opt out of such use of the information and the consumer does not opt out. The notice and opt out provisions do not apply in certain circumstances.

The proposed rule sets forth a Federal credit union's duties when either: (1) The credit union communicates its consumers' eligibility information to an affiliate for use in marketing (''communicating affiliate''); or (2) the credit union receives such information from its affiliate (''receiving affiliate''). Before an affiliate may use eligibility information shared with it by a communicating affiliate to provide solicitations to a consumer, the communicating affiliate must provide the consumer with an opt out notice, as specified in the rule. A receiving affiliate may not use eligibility information it receives from a communicating affiliate to make solicitations to the consumer unless the consumer has been provided an opt out notice, as specified in the rule, and does not opt out of that use. Federal credit unions will likely need the advice of legal counsel to ensure that they comply with the rule, and may also require computer programming changes and additional staff training. NCUA does not have a practicable or reliable basis for quantifying the costs of the proposed rule.

NCUA seeks information and comment on any costs, compliance requirements, or changes in operating procedures arising from the application of the proposed rule in addition to or which may differ from those arising from the application of the statute generally.

E. Identification of Duplicative, Overlapping, or Conflicting Federal Rules

NCUA is unable to identify any Federal statutes or regulations that would duplicate, overlap, or conflict with the proposed rule. NCUA seeks comment regarding any statutes or regulations, including State or local statutes or regulations, that would duplicate, overlap, or conflict with the proposed rule.

F. Discussion of Significant Alternatives

Section 214 of the FACT Act (which adds a new section 624 to the FCRA) generally provides that, if a person shares certain information about a consumer with an affiliate, the affiliate may not use that information to make or send solicitations to the consumer about its products or services, unless the consumer is given notice and a reasonable opportunity to opt out of such use of the information and the consumer does not opt out. The notice and opt out provisions do not apply in certain circumstances. The proposed rule applies to all Federal credit unions, regardless of asset size.

NCUA welcomes comments on any significant alternatives, consistent with the mandate in section 214 to restrict the use of certain information for marketing purposes that would minimize the impact of the proposed rule on small entities.

OCC and OTS Executive Order 12866 Determination

The OCC and OTS each has determined that its portion of the proposed rulemaking is not a significant regulatory action under Executive Order 12866.

OCC Executive Order 13132 Determination

The OCC has determined that this proposal does not have any federalism implications, as required by Executive Order 13132.

NCUA Executive Order 13132 Determination

Executive Order 13132 encourages independent regulatory agencies to consider the impact of their actions on State and local interests. In adherence to fundamental federalism principles, the NCUA, an independent regulatory agency as defined in 44 U.S.C. 3502(5), voluntarily complies with the executive order. The proposed rule applies only to federally chartered credit unions and would not have substantial direct effects on the States, on the connection between the national government and the States, or on the distribution of power and responsibilities among the various levels of government. The NCUA has determined that this proposed rule does not constitute a policy that has federalism implications for purposes of the executive order.

OCC and OTS Unfunded Mandates Reform Act of 1995 Determination

Section 202 of the Unfunded Mandates Reform Act of 1995, Public Law 104–4 (Unfunded Mandates Act) requires that an agency prepare a budgetary impact statement before promulgating a rule that includes a Federal mandate that may result in expenditure by State, local, and tribal governments, in the aggregate, or by the private sector, of $100 million or more in any one year. If a budgetary impact statement is required, section 205 of the Unfunded Mandates Act also requires an agency to identify and consider a reasonable number of regulatory alternatives before promulgating a rule. The OCC and OTS each has determined that this proposed rule will not result in expenditures by State, local, and tribal governments, or by the private sector, of $100 million or more. Accordingly, neither the OCC nor the OTS has prepared a budgetary impact statement or specifically addressed the regulatory alternatives considered.

NCUA: The Treasury and General Government Appropriations Act, 1999—Assessment of Federal Regulations and Policies on Families

The NCUA has determined that this proposed rule would not affect family well-being within the meaning of section 654 of the Treasury and General Government Appropriations Act, 1999, Pub. L. 105–277, 112 Stat. 2681 (1998).

NCUA: Interpretive Ruling and Policy Statement (IRPS) 87–2, as Amended by IRPS 03–2

Under NCUA's IRPS 87–2, as amended by IRPS 03–2, the NCUA Board's general policy is to provide a 60-day comment period for a proposed regulation. In this case, the NCUA Board believes that a 30-day comment period will be adequate and is appropriate given that the statutory deadline for the final rule is September 4, 2004. NCUA IRPS 87–2, 52 FR 35231, Sept. 18, 1987, as amended by IRPS 03–2, 68 FR 31949, May 29, 2003.

Community Bank Comment Request

The Agencies invite your comments on the impact of this proposal on

community banks. The Agencies recognize that community banks operate with more limited resources than larger institutions and may present a different risk profile. Thus, the Agencies specifically request comment on the impact of the proposal on community banks' current resources and available personnel with the requisite expertise, and whether the goals of the proposal could be achieved, for community banks, through an alternative approach.

V. Solicitation of Comments on Use of Plain Language

Section 722 of the GLBA requires the Federal banking agencies to use plain language in all proposed and final rules published after January 1, 2000. The Federal banking agencies invite comment on how to make this proposed rule easier to understand. For example:

- Have we organized the material to suit your needs? If not, how could this material be better organized?
- Are the requirements in the rule clearly stated? If not, how could the rule be more clearly stated?
- Do the regulations contain technical language or jargon that is not clear? If so, which language requires clarification?
- Would a different format (grouping and order of sections, use of headings, paragraphing) make the regulation easier to understand? If so, what changes to the format would make the regulation easier to understand?
- Would more, but shorter, sections be better? If so, which sections should be changed?
- What else could we do to make the regulation easier to understand?

The Federal banking agencies solicit comment on whether the inclusion of examples in the regulation is appropriate. Elevating the fact patterns to safe harbors in the rule may generate certain problems over time. For example, changes in technology or practices may ultimately impact the fact patterns contained in the examples and require changes to the regulation. Are there alternative methods to offer illustrative guidance of the concepts portrayed by the examples?

NCUA Regulatory Goal

NCUA's goal is to promulgate clear and understandable regulations that impose minimal regulatory burden. We request your comments on whether the proposed rule is understandable and minimally instrusive if implemented as proposed.

List of Subjects

12 CFR Part 41

Banks, banking, Consumer protection, National banks, Reporting and recordkeeping requirements.

12 CFR Part 222

Banks, Banking, Consumer protection, Fair Credit Reporting Act, Holding companies, Privacy, Reporting and recordkeeping requirements, State member banks.

12 CFR Part 334

Administrative practice and procedure, Bank deposit insurance, Banks, Banking, Reporting and recordkeeping requirements, Safety and soundness.

12 CFR Part 571

Consumer protection, Credit, Fair Credit Reporting Act, Privacy, Reporting and recordkeeping requirements, Savings associations.

12 CFR Part 717

Consumer protection, Credit unions, Fair credit reporting, Privacy, Reporting and recordkeeping requirements.

Office of the Comptroller of the Currency

12 CFR Chapter I

Authority and Issuance

For the reasons set forth in the preamble, the OCC proposes to amend part 41 (as proposed to be added at 69 FR 23394, April 28, 2004) of chapter I of title 12 of the Code of Federal Regulations as follows:

PART 41—FAIR CREDIT

1. The authority citation for part 41 is revised to read as follows:

Authority: 12 U.S.C. 1 *et seq.,* 24(Seventh), 93a, 481, 484, and 1818; 15 U.S.C. 1681a, 1681b, 1681s, and 1681t.

2. In § 41.1 paragraph (b) is republished to read as follows:

§ 41.1 Purpose, scope, and effective dates.

(a) * * * * *

(b) *Scope.*

(1) [Reserved]

(2) *Institutions covered.* Except as otherwise provided in this part, these regulations apply to national banks, Federal branches and agencies of foreign banks, and their respective operating subsidiaries that are not functionally regulated within the meaning of section 5(c)(5) of the Bank Holding Company Act of 1956, as amended (12 U.S.C. 1844(c)(5)).

3. Section 41.2 is republished to read as follows:

§ 41.2 Examples.

The examples in this part are not exclusive. Compliance with an example, to the extent applicable, constitutes compliance with this part. Examples in a paragraph illustrate only the issue described in the paragraph and do not illustrate any other issue that may arise in this part.

4. Revise § 41.3 to read as follows:

§ 41.3 Definitions.

For purposes of this part, unless explicitly stated otherwise:

(a) *Act* means the Fair Credit Reporting Act (15 U.S.C. 1681 *et seq.*).

(b) *Affiliate* means any person that is related by common ownership or common corporate control with another person.

(c) *Clear and conspicuous* means reasonably understandable and designed to call attention to the nature and significance of the information presented.

(d) *Company* means any corporation, limited liability company, business trust, general or limited partnership, association, or similar organization.

(e) *Consumer* means an individual.

(f) [Reserved].

(g) [Reserved].

(h) [Reserved].

(i) *Control* means:

(1) Ownership, control, or power to vote 25 percent or more of the outstanding shares of any class of voting security of the company, directly or indirectly, or acting through one or more other persons;

(2) Control in any manner over the election of a majority of the directors, trustees, or general partners (or individuals exercising similar functions) of the company; or

(3) The power to exercise, directly or indirectly, a controlling influence over the management or policies of the company, as the OCC determines.

(j) *Eligibility information* means any information the communication of which would be a consumer report if the exclusions from the definition of ''consumer report'' in section 603(d)(2)(A) of the Act did not apply.

(k) [Reserved].

(l) *Person* means any individual, partnership, corporation, trust, estate, cooperative, association, government or governmental subdivision or agency, or other entity.

(m) *Pre-existing business relationship* means a relationship between a person and a consumer based on:

(1) A financial contract between the person and the consumer, which is in force on the date on which the consumer is sent a solicitation covered by subpart C of this part;

(2) The purchase, rental, or lease by the consumer of the person's goods or services, or a financial transaction (including holding an active account or a policy in force or having another continuing relationship) between the consumer and the person, during the 18-month period immediately preceding the date on which a solicitation covered by subpart C of this part is made or sent to the consumer; or

(3) An inquiry or application by the consumer regarding a product or service offered by that person during the three-month period immediately preceding the date on which a solicitation covered by subpart C of this part is made or sent to the consumer.

(n) *Solicitation*—(1) *General.* Solicitation means marketing initiated by a person to a particular consumer that is:

(i) Based on eligibility information communicated to that person by its affiliate as described in subpart C of this part; and

(ii) Intended to encourage the consumer to purchase or obtain such product or service.

(2) *Exclusion of marketing directed at the general public.* A solicitation does not include communications that are directed at the general public and distributed without the use of eligibility information communicated by an affiliate. For example, television, magazine, and billboard advertisements do not constitute solicitations, even if those communications are intended to encourage consumers to purchase products and services from the person initiating the communications.

(3) *Examples of solicitations.* A solicitation would include, for example, a telemarketing call, direct mail, e-mail, or other form of marketing communication directed to a specific consumer that is based on eligibility information communicated by an affiliate.

5. A new Subpart C is added to read as follows:

Subpart C—Affiliate Use of Eligibility Information for Marketing

Sec.

Subpart C—Affiliate Use of Eligibility Information for Marketing

§ 41.20 Affiliate use of eligibility information for marketing.

For purposes of this subpart, *Bank* means national banks, Federal branches and agencies of foreign banks, and their respective operating subsidiaries that are not functionally regulated within the meaning of section 5(c)(5) of the Bank Holding Company Act of 1956, as amended (12 U.S.C. 1844(c)(5)).

(a) *General duties of a person communicating eligibility information to an affiliate*—(1) *Notice and opt out.* If a bank communicates eligibility information about a consumer to its affiliate, the bank's affiliate may not use the information to make or send solicitations to the consumer, unless prior to such use by the affiliate:

(i) The bank provides a clear and conspicuous notice to the consumer stating that the information may be communicated to and used by the bank's affiliate to make or send solicitations to the consumer about its products and services;

(ii) The bank provides the consumer a reasonable opportunity and a simple method to ''opt out'' of such use of that information by its affiliate; and

(iii) The consumer has not chosen to opt out.

(2) *Rules of construction*—(i) *General.* The notice required by this paragraph (a) may be provided either in the name of a person with which the consumer currently does or previously has done business or in one or more common corporate names shared by members of an affiliated group of companies that includes the common corporate name used by that person, and may be provided in the following manner:

(A) A bank may provide the notice directly to the consumer;

(B) A bank's agent may provide the notice on the bank's behalf, so long as—

(*1*) The bank's agent, if an affiliate of the bank, does not include any solicitation other than the bank's on or with the notice, unless it falls within one of the exceptions in paragraph (c) of this section; and

(2) The bank's agent gives the notice in the bank's name or a common name or names used by the family of companies; or

(C) A bank may provide a joint notice with one or more of the bank's affiliates or under a common name or names used by the family of companies as provided in § 41.24(c).

(ii) *Avoiding duplicate notices.* If Affiliate A communicates eligibility information about a consumer to Affiliate B, and Affiliate B communicates that same information to Affiliate C, Affiliate B does not have to give an opt out notice to the consumer when it provides eligibility information to Affiliate C, so long as Affiliate A's notice is broad enough to cover Affiliate C's use of the eligibility information to make solicitations to the consumer.

(iii) *Examples of rules of construction.* A, B, and C are affiliates. The consumer currently has a business relationship with affiliate A, but has never done business with affiliates B or C. Affiliate A communicates eligibility information about the consumer to B for purposes of making solicitations. B communicates the information it received from A to C for purposes of making solicitations. In this circumstance, the rules of construction would:

(A) Permit B to use the information to make solicitations if:

(*1*) A has provided the opt out notice directly to the consumer; or

(*2*) B or C has provided the opt out notice on behalf of A.

(B) Permit B or C to use the information to make solicitations if:

(*1*) A's notice is broad enough to cover both B's and C's use of the eligibility information; or

(*2*) A, B, or C has provided a joint opt out notice on behalf of the entire affiliated group of companies.

(C) Not permit B or C to use the information for marketing purposes if B has provided the opt out notice only in B's own name, because no notice would have been provided by or on behalf of A.

(b) *General duties of an affiliate receiving eligibility information.* If the bank receives eligibility information from an affiliate, the bank may not use the information to make or send solicitations to a consumer, unless the consumer has been provided an opt out notice, as described in paragraph (a) of this section, that applies to the bank's use of eligibility information and the consumer has not opted-out.

(c) *Exceptions.* The provisions of this subpart C do not apply if a bank uses eligibility information it receives from an affiliate:

(1) To make or send a marketing solicitation to a consumer with whom a bank has a pre-existing business relationship as defined in § 41.3(m);

(2) To facilitate communications to an individual for whose benefit a bank provides employee benefit or other services pursuant to a contract with an employer related to and arising out of the current employment relationship or status of the individual as a participant or beneficiary of an employee benefit plan;

(3) To perform services on behalf of an affiliate, except that this paragraph shall not be construed as permitting a bank to make or send solicitations on its behalf or on behalf of an affiliate if the bank or the affiliate, as applicable, would not be permitted to make or send the solicitation as a result of the election of the consumer to opt out under this subpart C;

(4) In response to a communication initiated by the consumer orally, electronically, or in writing;

(5) In response to an affirmative authorization or request by the consumer orally, electronically, or in writing to receive a solicitation; or

(6) If a bank's compliance with this subpart C would prevent it from complying with any provision of State insurance laws pertaining to unfair discrimination in any State in which the bank is lawfully doing business.

(d) *Examples of exceptions*—(1) *Examples of pre-existing business relationships.* (i) If a consumer has an insurance policy with a bank's insurance affiliate that is currently in force, the bank's insurance affiliate has a pre-existing business relationship with the consumer and can therefore use eligibility information it has received from the bank to make solicitations.

(ii) If a consumer has an insurance policy with a bank's insurance affiliate that has lapsed, the bank's insurance affiliate has a pre-existing business relationship with the consumer for 18 months after the date on which the policy ceases to be in force and can therefore use eligibility information it has received from the bank to make solicitations for 18 months after the date on which the policy ceases to be in force.

(iii) If a consumer applies to the bank's affiliate for a product or service, or inquires about the affiliate's products or services and provides contact information to the bank's affiliate for receipt of that information, the bank's affiliate has a pre-existing business relationship with the consumer for three months after the date of the inquiry or application and can therefore use eligibility information it has received from the bank to make solicitations for three months after the date of the inquiry or application.

(iv) If a consumer makes a telephone call to a centralized call center for an affiliated group of companies to inquire about the consumer's bank account, the call does not constitute an inquiry with any affiliate other than the bank that holds the consumer's bank account and does not establish a pre-existing business relationship between the consumer and any affiliate of the bank.

(2) *Examples of consumer-initiated communications.* (i) If a consumer who has an account with the bank initiates a telephone call to the bank's securities affiliate to request information about brokerage services or mutual funds and provides contact information for receiving that information, the bank's securities affiliate may use eligibility information about the consumer it obtains from the bank to make solicitations in response to the consumer-initiated call.

(ii) If the bank's affiliate makes the initial marketing call, leaves a message for the consumer to call back, and the consumer responds, the communication is not initiated by the consumer, but by the bank's affiliate.

(iii) If the consumer calls the bank's affiliate to ask about the affiliate's retail locations and hours, but does not request information about the bank's affiliate's products or services, solicitations by the bank's affiliate using eligibility information about the consumer it obtains from the bank would not be responsive to the consumer-initiated communication.

(3) *Example of consumer affirmative authorization or request.* If a consumer who obtains a mortgage from a bank requests or affirmatively authorizes information about homeowner's insurance from the bank's insurance affiliate, such authorization or request, whether given to the bank or to the bank's insurance affiliate, would permit the bank's insurance affiliate to use eligibility information about the consumer it obtains from the bank to make solicitations about homeowner's insurance to the consumer. A pre-selected check box would not satisfy the requirement for an affirmative authorization or request.

(e) *Prospective application.* The provisions of this subpart C shall not prohibit a bank's affiliate from using eligibility information communicated by the bank to make or send solicitations to a consumer if such information was received by the bank's affiliate prior to [Insert Mandatory Compliance Date].

(f) *Relation to affiliate-sharing notice and opt out.* Nothing in this subpart C limits the responsibility of a company to comply with the notice and opt out provisions of section 603(d)(2)(A)(iii) of the Act before it shares information other than transaction or experience information among affiliates to avoid becoming a consumer reporting agency.

§ 41.21 Contents of opt out notice.

(a) *General.* A notice must be clear, conspicuous, and concise, and must accurately:

(1) Disclose that the consumer may elect to limit a bank's affiliate from using eligibility information about the consumer that it obtains from the bank to make or send solicitations to the consumer;

(2) Disclose if applicable, that the consumer's election will apply for a specified period of time and that the consumer will be allowed to extend the election once that period expires; and

(3) Include a reasonable and simple method for the consumer to opt out.

(b) *Concise*—(1) *General.* For purposes of this subpart C, the term ''concise'' means a reasonably brief expression or statement.

(2) *Combination with other required disclosures.* A notice required by this subpart C may be concise even if it is combined with other disclosures required or authorized by Federal or State law.

(3) *Use of model forms.* The requirement for a concise notice is satisfied by use of a model form contained in Appendix A to this part, although use of a model form is not required.

(c) *Providing a menu of opt out choices.* With respect to the opt out election, a bank may allow a consumer to choose from a menu of alternatives when opting out of affiliate use of eligibility information for marketing, such as by selecting certain types of affiliates, certain types of information, or certain methods of delivery from which to opt out, so long as the bank offers as one of the alternatives the opportunity to opt out with respect to all affiliates, all eligibility information, and all methods of delivery.

(d) *Alternative contents.* If a bank provides the consumer with a broader right to opt out of marketing than is required by law, the bank satisfies the requirements of this section by providing the consumer with a clear, conspicuous, and concise notice that accurately discloses the consumer's opt out rights. A model notice is provided in Appendix A of this part for guidance, although use of the model notice is not required.

§ 41.22 Reasonable opportunity to opt out.

(a) *General.* Before a bank's affiliate uses eligibility information communicated by the bank to make or send solicitations to a consumer, the bank must provide the consumer with a reasonable opportunity, following the delivery of the opt out notice, to opt out of such use by the bank's affiliate.

(b) *Examples of a reasonable opportunity to opt out.* A bank provides a consumer with a reasonable opportunity to opt out if:

(1) *By mail.* The bank mails the opt out notice to a consumer and gives the consumer 30 days from the date the bank mailed the notice to elect to opt out by any reasonable means.

(2) *By electronic means.* The bank notifies the consumer electronically and gives the consumer 30 days after the date that the consumer acknowledges receipt of the electronic notice to elect to opt out by any reasonable means.

(3) *At the time of an electronic transaction.* The bank provides the opt out notice to the consumer at the time of an electronic transaction, such as a transaction conducted on a Web site, and requests that the consumer decide, as a necessary part of proceeding with the transaction, whether to opt out before completing the transaction, so long as the bank provides a simple process at the Internet Web site that the consumer may use at that time to opt out.

(4) *By including in a privacy notice.* The bank includes the opt out notice in a Gramm-Leach-Bliley Act privacy notice (12 CFR part 40, subpart A) and allows the consumer to exercise the opt out within a reasonable period of time and in the same manner as the opt out under the Gramm-Leach-Bliley Act (15 U.S.C. 1681 *et seq.*).

(5) *By providing an opt in.* If a bank has a policy of not allowing an affiliate to use eligibility information to make or send solicitations to the consumer unless the consumer affirmatively consents, the bank gives the consumer the opportunity to opt in by affirmative consent to such use by the bank's affiliate. The bank must document the consumer's affirmative consent. A pre-selected check box does not constitute evidence of the consumer's affirmative consent.

§ 41.23 Reasonable and simple methods of opting out.

(a) *Reasonable and simple methods of opting out.* A bank provides a reasonable and simple method for a consumer to exercise a right to opt out if it:

(1) Designates check-off boxes in a prominent position on the relevant forms included with the opt out notice required by this subpart C;

(2) Includes a reply form and a self-addressed envelope together with the opt out notice required by this subpart C;

(3) Provides an electronic means to opt out, such as a form that can be electronically mailed or processed at the bank's Web site, if the consumer agrees to the electronic delivery of information; or

(4) Provides a toll-free telephone number that consumers may call to opt out.

(b) *Methods of opting out that are not reasonable or simple.* A bank does not provide a reasonable and simple method for exercising an opt out right if it:

(1) Requires the consumer to write a letter to the bank;

(2) Requires the consumer to call or write the bank to obtain a form for opting out, rather than including the form with the notice; or

(3) Requires the consumer who agrees to receive the opt out notice in electronic form only, such as by electronic mail or at the bank's Web site, to opt out solely by telephone or by paper mail.

§ 41.24 Delivery of opt out notices.

(a) *General.* A bank must provide an opt out notice so that each consumer can reasonably be expected to receive actual notice. For opt out notices the bank provides electronically, it may either comply with the electronic disclosure provisions in this subpart C or with the provisions in section 101 of the Electronic Signatures in Global and National Commerce Act, 15 U.S.C. 7001 *et seq.*

(b) *Examples of expectation of actual notice.* (1) A bank may reasonably expect that a consumer will receive actual notice if it:

(i) Hand-delivers a printed copy of the notice to the consumer;

(ii) Mails a printed copy of the notice to the last known mailing address of the consumer; or

(iii) For the consumer who obtains a product or service from a bank electronically, such as at an Internet Web site, post the notice on the bank's electronic Web site and require the consumer to acknowledge receipt of the notice as a necessary step for obtaining a particular product or service.

(2) A bank may not reasonably expect that a consumer will receive actual notice if it:

(i) Only posts a sign in its branch or office or generally publishes advertisements presenting the notice; or

(ii) Sends the notice via electronic mail to a consumer who has not agreed to the electronic delivery of information.

(c) *Joint notice with affiliates*—(1) *General.* A bank may provide a joint notice from it and one or more of the bank's affiliates, as identified in the notice, so long as the notice is accurate with respect to the bank and each affiliate.

(2) *Identification of affiliates.* A bank does not have to list each affiliate providing the joint notice by its name. If each affiliate shares a common name, such as ''ABC,'' then the joint notice may state that it applies to ''all institutions with the ABC name'' or ''all affiliates in the ABC family of companies.'' If, however, an affiliate does not have ABC in its name, then the joint notice must separately identify each family of companies with a common name or the institution.

(d) *Joint relationships*—(1) *General.* If two or more consumers jointly obtain a product or service from a bank (joint consumers), the following rules apply:

(i) The bank may provide a single opt out notice.

(ii) Any of the joint consumers may exercise the right to opt out.

(iii) The bank may either:

(A) Treat an opt out direction by a joint consumer as applying to all of the associated joint consumers; or

(B) Permit each joint consumer to opt out separately.

(iv) If a bank permits each joint consumer to opt out separately, the bank must permit:

(A) One of the joint consumers to opt out on behalf of all of the joint consumers; and

(B) One or more joint consumers to notify the bank of their opt out directions in a single response.

(v) A bank must explain in its opt out notice which of the policies in paragraph (d)(1)(iii) of this section the bank will follow, as well as the information required by paragraph (d)(1)(iv) of this section.

(vi) A bank may not require all joint consumers to opt out before it implements any opt out direction.

(vii) If a bank receives an opt out by a particular joint consumer that does not apply to the others, the bank may use eligibility information about the others as long as no eligibility information is used about the consumer who opted out.

(2) *Example.* If consumers A and B, who have different addresses, have a joint checking account with a bank and arrange for the bank to send statements to A's address, the bank may do any of the following, but the bank must explain in the bank's opt out notice which opt out policy the bank will follow. The bank may send a single opt out notice to A's address and:

(i) Treat an opt out direction by A as applying to the entire account. If the bank does so and A opts out, the bank may not require B to opt out as well before implementing A's opt out direction.

(ii) Treat A's opt out direction as applying to A only. If a bank does so, it must also permit:

(A) A and B to opt out for each other; and

(B) A and B to notify the bank of their opt out directions in a single response (such as on a single form) if they choose to give separate opt out directions.

(iii) If A opts out only for A, and B does not opt out, the bank's affiliate may use information only about B to send solicitations to B, but may not use information about A and B jointly to send solicitations to B.

§ 41.25 Duration and effect of opt out.

(a) *Duration of opt out.* The election of a consumer to opt out shall be effective for the opt out period, which is a period of at least five years beginning as soon as reasonably practicable after the consumer's opt out election is received. A bank may establish an opt out period of more than five years, including an opt out period that does not expire unless the consumer revokes it in writing, or if the consumer agrees, electronically.

(b) *Effect of opt out.* A receiving affiliate may not make or send solicitations to a consumer during the opt out period based on eligibility information it receives from an affiliate, except as provided in the exceptions in § 41.20(d) or if the opt out is revoked by the consumer.

(c) *Time of opt out.* A consumer may opt out at any time.

(d) *Termination of relationship.* If the consumer's relationship with a bank terminates when a consumer's opt out election is in force, the opt out will continue to apply indefinitely, unless revoked by the consumer.

§ 41.26 Extension of opt out.

(a) *General.* For a consumer who has opted out, a receiving affiliate may not make or send solicitations to the consumer after the expiration of the opt out period based on eligibility information it receives or has received from an affiliate, unless the person responsible for providing the initial opt out notice, or its successor, has given the consumer an extension notice and a reasonable opportunity to extend the opt out, and the consumer does not extend the opt out.

(b) *Duration of extension.* Each opt out extension shall comply with § 41.25(a).

(c) *Contents of extension notice.* The notice provided at extension must be clear, conspicuous, and concise, and must accurately disclose either:

(1) The same contents specified in § 41.21(a) for the initial notice, along with a statement explaining that the consumer's previous opt out has expired or is about to expire, as applicable, and that the consumer must opt out again if the consumer wishes to keep the opt out election in force; or

(2) Each of the following items:

(i) That the consumer previously elected to limit a bank's affiliate from using information about the consumer that it obtains from the bank to make or send solicitations to the consumer;

(ii) That the consumer's election has expired or is about to expire, as applicable;

(iii) That the consumer may elect to extend the consumer's previous election; and

(iv) A reasonable and simple method for the consumer to opt out.

(d) *Timing of the extension notice*—(1) *General.* An extension notice may be provided to the consumer either:

(i) A reasonable period of time before the expiration of the opt out period; or

(ii) Any time after the expiration of the opt out period but before any affiliate makes or sends solicitations to the consumer that would have been prohibited by the expired opt out.

(2) *Reasonable period of time before expiration.* Providing an extension notice on or with the last annual privacy notice required by the Gramm-Leach-Bliley Act, 15 U.S.C. 6801 *et seq.*, that is provided to the consumer before expiration of the opt out period shall be deemed reasonable in all cases.

(e) *No effect on opt out period.* The opt out period may not be shortened to a period of less than five years by sending an extension notice to the consumer before expiration of the opt out period.

§ 41.27 Consolidated and equivalent notices.

(a) *Coordinated and consolidated notices.* A notice required by this subpart C may be coordinated and consolidated with any other notice or disclosure required to be issued under any other provision of law, including but not limited to the notice described in section 603(d)(2)(A)(iii) of the Act and the Gramm-Leach-Bliley Act privacy notice.

(b) *Equivalent notices.* A notice or other disclosure that is equivalent to the notice required by this subpart C, and that a bank provides to a consumer together with disclosures required by any other provision of law, shall satisfy the requirements of this subpart C.

6. Appendix A to part 41 is added to read as follows:

Appendix A to 12 CFR Part 41—Model Forms for Opt Out Notices

A–1: Model Form for Initial Opt Out Notice

Your Choice To Limit Marketing

• You may limit our affiliates from marketing their products or services to you based on information that we share with them, such as your income, your account history with us, and your credit score.

• [Include if applicable.] Your decision to limit marketing offers from our affiliates will apply for 5 years. Once that period expires, you will be allowed to extend your decision.

• [Include if applicable.] This limitation does not apply in certain circumstances, such as if you currently do business with one of our affiliates or if you ask to receive information or offers from them.

To limit marketing offers [include all that apply]:

• Call us toll-free at 877–###–####; or

• Visit our Web site at *www.websiteaddress.com;* or

• Check the box below and mail it to:

[Company name].
[Company address].

__ I do not want your affiliates to market their products or services to me based on information that you share with them.

A–2: Model Form for Extension Notice

Extending Your Choice to Limit Marketing

• You previously chose to limit our affiliates from marketing their products or services to you based on information that we share with them, such as your income, your account history with us, and your credit score.

• Your choice has expired or is about to expire.

• [Include if applicable.] This limitation does not apply in certain circumstances, such as if you currently do business with one of our affiliates or if you ask to receive information or offers from them.

To extend your choice for another 5 years [include all that apply]:

• Call us toll-free at 877–###–####; or

• Visit our Web site at *www.websiteaddress.com;* or

• Check the box below and mail it to:

[Company name].
[Company address].

____ I want to extend my choice for another 5 years.

A–3: Model Form for Voluntary "No Marketing" Notice

Your Choice To Stop Marketing

• You may choose to stop all marketing offers from us and our affiliates.

To stop all marketing offers [include all that apply]:

• Call us toll-free at 877–###–####; or

• Visit our Web site at *www.websiteaddress.com;* or

• Check the box on the form below and mail it to:

[Company name].
[Company address].

__I do not want you or your affiliates to send me marketing offers.

Board of Governors of the Federal Reserve System

12 CFR Chapter II

Authority and Issuance

For the reasons set forth in the joint preamble, title 12, chapter II, of the

Code of Federal Regulations is proposed to be amended as follows:

PART 222—FAIR CREDIT REPORTING (REGULATION V)

1. The authority citation for part 222 is revised to read as follows:

Authority: 15 U.S.C. 1681b and 1681s; secs. 3, 214, and 217, Pub. L. 108–159, 117 Stat. 1952.

Subpart A—General Provisions

2. Section 222.1 is amended by adding a new paragraph (a), and paragraph (b)(2)(i) (as proposed to be added at 69 FR 23397, April 28, 2004) is revised to read as follows:

§ 222.1 Purpose, scope, and effective dates.

(a) *Purpose.* The purpose of this part is to implement the provisions of the Fair Credit Reporting Act applicable to the institutions listed in paragraph (b)(2) of this section. This part generally applies to institutions that obtain and use information about consumers to determine the consumer's eligibility for products, services, or employment, share such information among affiliates, and furnish such information to consumer reporting agencies.

(b) * * *

(2) *Institutions covered.* (i) Except as otherwise provided in paragraph (b)(2) of this section, these regulations apply to banks that are members of the Federal Reserve System (other than national banks), branches and Agencies of foreign banks (other than Federal branches, Federal Agencies, and insured State branches of foreign banks), commercial lending companies owned or controlled by foreign banks, organizations operating under section 25 or 25A of the Federal Reserve Act (12 U.S.C. 601 *et seq.*, and 611 *et seq.*), and bank holding companies and affiliates of such holding companies (other than depository institutions and consumer reporting agencies).

* * * * *

3. Section 222.2 (as proposed to be added at 69 FR 23397, April 28, 2004) is republished to read as follows:

§ 222.2 Examples.

The examples in this part are not exclusive. Compliance with an example, to the extent applicable, constitutes compliance with this part. Examples in a paragraph illustrate only the issue described in the paragraph and do not illustrate any other issue that may arise in this part.

4. Section 222.3 (as proposed to be added at 69 FR 23397, April 28, 2004) is revised to read as follows:

§ 222.3 Definitions.

As used in this part, unless the context requires otherwise:

(a) *Act* means the Fair Credit Reporting Act (15 U.S.C. 1681 *et seq.*).

(b) *Affiliate* means any person that is related by common ownership or common corporate control with another person.

(c) *Clear and conspicuous* means reasonably understandable and designed to call attention to the nature and significance of the information presented.

(d) *Company* means any corporation, limited liability company, business trust, general or limited partnership, association, or similar organization.

(e) *Consumer* means an individual.

(f) [Reserved].

(g) [Reserved].

(h) [Reserved].

(i) *Control* of a company means:

(1) Ownership, control, or power to vote 25 percent or more of the outstanding shares of any class of voting security of the company, directly or indirectly, or acting through one or more other persons;

(2) Control in any manner over the election of a majority of the directors, trustees, or general partners (or individuals exercising similar functions) of the company; or

(3) The power to exercise, directly or indirectly, a controlling influence over the management or policies of the company, as the Board determines.

(j) *Eligibility information* means any information the communication of which would be a consumer report if the exclusions from the definition of ''consumer report'' in section 603(d)(2)(A) of the Act did not apply.

(k) [Reserved].

(l) *Person* means any individual, partnership, corporation, trust, estate, cooperative, association, government or governmental subdivision or agency, or other entity.

(m) *Pre-existing business relationship* means a relationship between a person and a consumer based on—

(1) A financial contract between the person and the consumer which is in force on the date on which the consumer is sent a solicitation covered by subpart C of this part;

(2) The purchase, rental, or lease by the consumer of the person's goods or services, or a financial transaction (including holding an active account or a policy in force or having another continuing relationship) between the consumer and the person, during the 18-month period immediately preceding the date on which a solicitation covered by subpart C of this part is made or sent to the consumer; or

(3) An inquiry or application by the consumer regarding a product or service offered by that person during the 3-month period immediately preceding the date on which a solicitation covered by subpart C of this part is made or sent to the consumer.

(n) *Solicitation.* (1) *In general.* Solicitation means marketing initiated by a person to a particular consumer that is—

(i) Based on eligibility information communicated to that person by its affiliate as described in subpart C of this part; and

(ii) Intended to encourage the consumer to purchase or obtain such product or service.

(2) *Exclusion of marketing directed at the general public.* A solicitation does not include communications that are directed at the general public and distributed without the use of eligibility information communicated by an affiliate. For example, television, magazine, and billboard advertisements do not constitute solicitations, even if those communications are intended to encourage consumers to purchase products and services from the person initiating the communications.

(3) *Examples of solicitations.* A solicitation would include, for example, a telemarketing call, direct mail, e-mail, or other form of marketing communication directed to a specific consumer that is based on eligibility information communicated by an affiliate.

(o) *You* means member banks of the Federal Reserve System (other than national banks), branches and Agencies of foreign banks (other than Federal branches, Federal Agencies, and insured State branches of foreign banks), commercial lending companies owned or controlled by foreign banks, organizations operating under section 25 or 25A of the Federal Reserve Act (12 U.S.C. 601 *et seq.*, and 611 *et seq.*), and bank holding companies and affiliates of such holding companies (other than depository institutions and consumer reporting agencies).

5. A new subpart C is added to part 222 to read as follows:

Subpart C—Affiliate Use of Information for Marketing

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Subpart C—Affiliate Use of Information for Marketing

§ 222.20 Affiliate use of eligibility information for marketing.

(a) *General duties of a person communicating eligibility information to an affiliate*—(1) *Notice and opt out.* If you communicate eligibility information about a consumer to your affiliate, your affiliate may not use the information to make or send solicitations to the consumer, unless prior to such use by the affiliate—

(i) You provide a clear and conspicuous notice to the consumer stating that the information may be communicated to and used by your affiliate to make or send solicitations to the consumer about its products and services;

(ii) You provide the consumer a reasonable opportunity and a simple method to ''opt out'' of such use of that information by your affiliate; and

(iii) The consumer has not chosen to opt out.

(2) *Rules of construction*—(i) *In general.* The notice required by this paragraph may be provided either in the name of a person with which the consumer currently does or previously has done business or in one or more common corporate names shared by members of an affiliated group of companies that includes the common corporate name used by that person, and may be provided in the following manner:

(A) You may provide the notice directly to the consumer;

(B) Your agent may provide the notice on your behalf, so long as—

(*1*) Your agent, if your affiliate, does not include any solicitation other than yours on or with the notice, unless it falls within one of the exceptions in paragraph (c) of this section; and

(*2*) Your agent gives the notice in your name or a common name or names used by the family of companies; or

(C) You may provide a joint notice with one or more of your affiliates or under a common corporate name or names used by the family of companies as provided in § 222.24(c).

(ii) *Avoiding duplicate notices.* If Affiliate A communicates eligibility information about a consumer to Affiliate B, and Affiliate B communicates that same information to Affiliate C, Affiliate B does not have to give an opt out notice to the consumer when it provides eligibility information to Affiliate C, so long as Affiliate A's notice is broad enough to cover Affiliate C's use of the eligibility information to make solicitations to the consumer.

(iii) *Examples of rules of construction.* A, B, and C are affiliates. The consumer currently has a business relationship with affiliate A, but has never done business with affiliates B or C. Affiliate A communicates eligibility information about the consumer to B for purposes of making solicitations. B communicates the information it received from A to C for purposes of making solicitations. In this circumstance, the rules of construction would—

(A) Permit B to use the information to make solicitations if:

(*1*) A has provided the opt out notice directly to the consumer; or

(*2*) B or C has provided the opt out notice on behalf of A.

(B) Permit B or C to use the information to make solicitations if:

(*1*) A's notice is broad enough to cover both B's and C's use of the eligibility information; or

(*2*) A, B, or C has provided a joint opt out notice on behalf of the entire affiliated group of companies.

(C) Not permit B or C to use the information for marketing purposes if B has provided the opt out notice only in B's own name, because no notice would have been provided by or on behalf of A.

(b) *General duties of an affiliate receiving eligibility information.* If you receive eligibility information from an affiliate, you may not use the information to make or send solicitations to a consumer, unless the consumer has been provided an opt out notice, as described in paragraph (a) of this section, that applies to your use of eligibility information and the consumer has not opted-out.

(c) *Exceptions.* The provisions of this subpart do not apply if you use eligibility information you receive from an affiliate:

(1) To make or send a marketing solicitation to a consumer with whom you have a pre-existing business relationship as defined in § 222.3(m);

(2) To facilitate communications to an individual for whose benefit you provide employee benefit or other services pursuant to a contract with an employer related to and arising out of the current employment relationship or status of the individual as a participant or beneficiary of an employee benefit plan;

(3) To perform services on behalf of an affiliate, except that this subparagraph shall not be construed as permitting you to make or send solicitations on your behalf or on behalf of an affiliate if you or the affiliate, as applicable, would not be permitted to make or send the solicitation as a result of the election of the consumer to opt out under this subpart;

(4) In response to a communication initiated by the consumer orally, electronically, or in writing;

(5) In response to an affirmative authorization or request by the consumer orally, electronically, or in writing to receive a solicitation; or

(6) If your compliance with this subpart would prevent you from complying with any provision of State insurance laws pertaining to unfair discrimination in any State in which you are lawfully doing business.

(d) *Examples of exceptions*—(1) *Examples of pre-existing business relationships.* (i) If a consumer has an insurance policy with your insurance affiliate that is currently in force, your insurance affiliate has a pre-existing business relationship with the consumer and can therefore use eligibility information it has received from you to make solicitations.

(ii) If a consumer has an insurance policy with your insurance affiliate that has lapsed, your insurance affiliate has a pre-existing business relationship with the consumer for 18 months after the date on which the policy ceases to be in force and can therefore use eligibility information it has received from you to make solicitations for 18 months after the date on which the policy ceases to be in force.

(iii) If a consumer applies to your affiliate for a product or service, or inquires about your affiliate's products or services and provides contact information to your affiliate for receipt of that information, your affiliate has a pre-existing business relationship with the consumer for 3 months after the date of the inquiry or application and can therefore use eligibility information it has received from you to make solicitations for 3 months after the date of the inquiry or application.

(iv) If a consumer makes a telephone call to a centralized call center for an affiliated group of companies to inquire about the consumer's bank account, the call does not constitute an inquiry with any affiliate other than the bank that holds the consumer's bank account and does not establish a pre-existing business relationship between the consumer and any affiliate of the bank.

(2) *Examples of consumer-initiated communications.* (i) If a consumer who has an account with you initiates a telephone call to your securities affiliate to request information about brokerage services or mutual funds and provides contact information for receiving that information, your securities affiliate may use eligibility information about the consumer it obtains from you to

make solicitations in response to the consumer-initiated call.

(ii) If your affiliate makes the initial marketing call, leaves a message for the consumer to call back, and the consumer responds, the communication is not initiated by the consumer, but by your affiliate.

(iii) If the consumer calls your affiliate to ask about retail locations and hours, but does not request information about your affiliate's products or services, solicitations by your affiliate using eligibility information about the consumer it obtains from you would not be responsive to the consumer-initiated communication.

(3) *Example of consumer affirmative authorization or request.* If a consumer who obtains a mortgage from you requests or affirmatively authorizes information about homeowner's insurance from your insurance affiliate, such authorization or request, whether given to you or to your insurance affiliate, would permit your insurance affiliate to use eligibility information about the consumer it obtains from you to make solicitations about homeowner's insurance to the consumer. A pre-selected check box would not satisfy the requirement for an affirmative authorization or request.

(e) *Prospective application.* The provisions of this subpart shall not prohibit your affiliate from using eligibility information communicated by you to make or send solicitations to a consumer if such information was received by your affiliate prior to [Insert Mandatory Compliance Date].

(f) *Relation to affiliate-sharing notice and opt out.* Nothing in this subpart limits the responsibility of a company to comply with the notice and opt out provisions of section 603(d)(2)(A)(iii) of the Act before it shares information other than transaction or experience information among affiliates to avoid becoming a consumer reporting agency.

§ 222.21 Contents of opt out notice.

(a) *In general.* A notice must be clear, conspicuous, and concise, and must accurately disclose:

(1) That the consumer may elect to limit your affiliate from using eligibility information about the consumer that it obtains from you to make or send solicitations to the consumer;

(2) If applicable, that the consumer's election will apply for a specified period of time and that the consumer will be allowed to extend the election once that period expires; and

(3) A reasonable and simple method for the consumer to opt out.

(b) *Concise*—(1) *In general.* For purposes of this subpart, the term ''concise'' means a reasonably brief expression or statement.

(2) *Combination with other required disclosures.* A notice required by this subpart may be concise even if it is combined with other disclosures required or authorized by Federal or State law.

(3) *Use of model form.* The requirement for a concise notice is satisfied by use of a model form contained in Appendix A of this part, although use of the model form is not required.

(c) *Providing a menu of opt out choices.* With respect to the opt out election, you may allow a consumer to choose from a menu of alternatives when opting out of affiliate use of eligibility information for marketing, such as by selecting certain types of affiliates, certain types of information, or certain methods of delivery from which to opt out, so long as you offer as one of the alternatives the opportunity to opt out with respect to all affiliates, all eligibility information, and all methods of delivery.

(d) *Alternative contents.* If you provide the consumer with a broader right to opt out of marketing than is required by law, you satisfy the requirements of this section by providing the consumer with a clear, conspicuous, and concise notice that accurately discloses the consumer's opt out rights. A model notice is provided in Appendix A of this part for guidance, although use of the model notice is not required.

§ 222.22 Reasonable opportunity to opt out.

(a) *In general.* Before your affiliate uses eligibility information communicated by you to make or send solicitations to a consumer, you must provide the consumer with a reasonable opportunity, following the delivery of the opt out notice, to opt out of such use by your affiliate.

(b) *Examples of a reasonable opportunity to opt out.* You provide a consumer with a reasonable opportunity to opt out if:

(1) *By mail.* You mail the opt out notice to a consumer and give the consumer 30 days from the date you mailed the notice to elect to opt out by any reasonable means.

(2) *By electronic means.* You notify the consumer electronically and give the consumer 30 days after the date that the consumer acknowledges receipt of the electronic notice to elect to opt out by any reasonable means.

(3) *At the time of an electronic transaction.* You provide the opt out notice to the consumer at the time of an electronic transaction, such as a transaction conducted on an Internet Web site, and request that the consumer decide, as a necessary part of proceeding with the transaction, whether to opt out before completing the transaction, so long as you provide a simple process at the Internet Web site that the consumer may use at that time to opt out.

(4) *By including in a privacy notice.* You include the opt out notice in a Gramm-Leach-Bliley Act privacy notice and allow the consumer to exercise the opt out within a reasonable period of time and in the same manner as the opt out under the Gramm-Leach-Bliley Act, 15 U.S.C. 6801 *et seq.*

(5) *By providing an ''opt in''.* If you have a policy of not allowing an affiliate to use eligibility information to make or send solicitations to the consumer unless the consumer affirmatively consents, you give the consumer the opportunity to ''opt in'' by affirmative consent to such use by your affiliate. You must document the consumer's affirmative consent. A pre-selected check box does not constitute evidence of the consumer's affirmative consent.

§ 222.23 Reasonable and simple methods of opting out.

(a) *Reasonable and simple methods of opting out.* You provide a reasonable and simple method for a consumer to exercise a right to opt out if you—

(1) Designate check-off boxes in a prominent position on the relevant forms included with the opt out notice required by this subpart;

(2) Include a reply form and a self-addressed envelope together with the opt out notice required by this subpart;

(3) Provide an electronic means to opt out, such as a form that can be electronically mailed or processed at your Web site, if the consumer agrees to the electronic delivery of information; or

(4) Provide a toll-free telephone number that consumers may call to opt out.

(b) *Methods of opting out that are not reasonable or simple.* You *do not* provide a reasonable and simple method for exercising an opt out right if you—

(1) Require the consumer to write his or her own letter to you;

(2) Require the consumer to call or write to you to obtain a form for opting out, rather than including the form with the notice; or

(3) Require the consumer who agrees to receive the opt out notice in electronic form only, such as by electronic mail or at your Web site, to opt out solely by telephone or by paper mail.

§ 222.24 Delivery of opt out notices.

(a) *In general.* You must provide an opt out notice so that each consumer can reasonably be expected to receive actual notice. For opt out notices you provide electronically, you may either comply with the electronic disclosure provisions in this subpart or with the provisions in section 101 of the Electronic Signatures in Global and National Commerce Act, 15 U.S.C. 7001 *et seq.*

(b) *Examples of expectation of actual notice.* (1) You may reasonably expect that a consumer will receive actual notice if you:

(i) Hand-deliver a printed copy of the notice to the consumer;

(ii) Mail a printed copy of the notice to the last known mailing address of the consumer; or

(iii) For the consumer who obtains a product or service from you electronically, such as on an Internet Web site, post the notice on your electronic site and require the consumer to acknowledge receipt of the notice as a necessary step to obtaining a particular product or service.

(2) You may *not* reasonably expect that a consumer will receive actual notice if you:

(i) Only post a sign in your branch or office or generally publish advertisements presenting your notice; or

(ii) Send the notice via electronic mail to a consumer who has not agreed to the electronic delivery of information.

(c) *Joint notice with affiliates*—(1) *In general.* You may provide a joint notice from you and one or more of your affiliates, as identified in the notice, so long as the notice is accurate with respect to you and each affiliate.

(2) *Identification of affiliates.* You do not have to list each affiliate providing the joint notice by its name. If each affiliate shares a common name, such as ''ABC,'' then the joint notice may state that it applies to ''all institutions with the ABC name'' or ''all affiliates in the ABC family of companies.'' If, however, an affiliate does not have ABC in its name, then the joint notice must separately identify each family of companies with a common name or the institution.

(d) *Joint relationships*—(1) *In general.* If two or more consumers jointly obtain a product or service from you (joint consumers), the following rules apply:

(i) You may provide a single opt out notice.

(ii) Any of the joint consumers may exercise the right to opt out.

(iii) You may either—

(A) Treat an opt out direction by a joint consumer as applying to all of the associated joint consumers; or

(B) Permit each joint consumer to opt out separately.

(iv) If you permit each joint consumer to opt out separately, you must permit:

(A) One of the joint consumers to opt out on behalf of all of the joint consumers; and

(B) One or more joint consumers to notify you of their opt out directions in a single response.

(v) You must explain in your opt out notice which of the policies in paragraph (d)(1)(iii) of this section you will follow, as well as the information required by paragraph (d)(1)(iv) of this section.

(vi) You may not require *all* joint consumers to opt out before you implement *any* opt out direction.

(vii) If you receive an opt out by a particular joint consumer that does not apply to the others, you may use eligibility information about the others as long as no eligibility information is used about the consumer who opted out.

(2) *Example.* If consumers A and B, who have different addresses, have a joint checking account with you and arrange for you to send statements to A's address, you may do any of the following, but you must explain in your opt out notice which opt out policy you will follow. You may send a single opt out notice to A's address and:

(i) Treat an opt out direction by A as applying to the entire account. If you do so and A opts out, you may not require B to opt out as well before implementing A's opt out direction.

(ii) Treat A's opt out direction as applying to A only. If you do so, you must also permit:

(A) A and B to opt out for each other; and

(B) A and B to notify you of their opt out directions in a single response (such as on a single form) if they choose to give separate opt out directions.

(iii) If A opts out only for A, and B does not opt out, your affiliate may use information only about B to send solicitations to B, but may not use information about A and B jointly to send solicitations to B.

§ 222.25 Duration and effect of opt out.

(a) *Duration of opt out.* The election of a consumer to opt out shall be effective for the opt out period, which is a period of at least 5 years beginning as soon as reasonably practicable after the consumer's opt out election is received. You may establish an opt out period of more than 5 years, including an opt out period that does not expire unless the consumer revokes it in writing, or if the consumer agrees, electronically.

(b) *Effect of opt out.* A receiving affiliate may not make or send solicitations to a consumer during the opt out period based on eligibility information it receives from an affiliate, except as provided in the exceptions in § 222.20(c) or if the opt out is revoked by the consumer.

(c) *Time of opt out.* A consumer may opt out at any time.

(d) *Termination of relationship.* If the consumer's relationship with you terminates when a consumer's opt out election is in force, the opt out will continue to apply indefinitely, unless revoked by the consumer.

§ 222.26 Extension of opt out.

(a) *In general.* For a consumer who has opted out, a receiving affiliate may not make or send solicitations to the consumer after the expiration of the opt out period based on eligibility information it receives or has received from an affiliate, unless the person responsible for providing the initial opt out notice, or its successor, has given the consumer an extension notice and a reasonable opportunity to extend the opt out, and the consumer does not extend the opt out.

(b) *Duration of extension.* Each opt out extension shall comply with § 222.25(a).

(c) *Contents of extension notice.* The notice provided at extension must be clear, conspicuous, and concise, and must accurately disclose either:

(1) The same contents specified in § 222.21(a) for the initial notice, along with a statement explaining that the consumer's previous opt out has expired or is about to expire, as applicable, and that the consumer must opt out again if the consumer wishes to keep the opt out election in force; or

(2) Each of the items listed below:

(i) That the consumer previously elected to limit your affiliate from using information about the consumer that it obtains from you to make or send solicitations to the consumer;

(ii) That the consumer's election has expired or is about to expire, as applicable;

(iii) That the consumer may elect to extend the consumer's previous election; and

(iv) A reasonable and simple method for the consumer to opt out.

(d) *Timing of the extension notice*—(1) *In general.* An extension notice may be provided to the consumer either'

(i) A reasonable period of time before the expiration of the opt out period; or

(ii) Any time after the expiration of the opt out period but before any

affiliate makes or sends solicitations to the consumer that would have been prohibited by the expired opt out.

(2) *Reasonable period of time before expiration.* Providing an extension notice on or with the last annual privacy notice required by the Gramm-Leach-Bliley Act, 15 U.S.C. 6801 *et seq.*, that is provided to the consumer before expiration of the opt out period shall be deemed reasonable in all cases.

(e) *No effect on opt out period.* The opt out period may not be shortened to a period of less than 5 years by sending an extension notice to the consumer before expiration of the opt out period.

§ 222.27 Consolidated and equivalent notices.

(a) *Coordinated and consolidated notices.* A notice required by this subpart may be coordinated and consolidated with any other notice or disclosure required to be issued under any other provision of law, including but not limited to the notice described in section 603(d)(2)(A)(iii) of the Act and the Gramm-Leach-Bliley Act privacy notice.

(b) *Equivalent notices.* A notice or other disclosure that is equivalent to the notice required by this subpart, and that you provide to a consumer together with disclosures required by any other provision of law, shall satisfy the requirements of this subpart.

6. A new Appendix A to part 222 is added to read as follows:

Appendix A to Part 222—Model Forms for Opt Out Notices

A–1 Model Form for Initial Opt Out Notice
A–2 Model Form for Extension Notice
A–3 Model Form for Voluntary ''No Marketing'' Notice

A–1—Model Form for Initial Opt Out Notice

Your Choice To Limit Marketing

• You may limit our affiliates from marketing their products or services to you based on information that we share with them, such as your income, your account history with us, and your credit score.
• [Include if applicable.] Your decision to limit marketing offers from our affiliates will apply for 5 years. Once that period expires, you will be allowed to extend your decision.
• [Include if applicable.] This limitation does not apply in certain circumstances, such as if you currently do business with one of our affiliates or if you ask to receive information or offers from them.

To limit marketing offers [include all that apply]:
• Call us toll-free at 877–###–####; or
• Visit our Web site at *www.websiteaddress.com;* or
• Check the box below and mail it to:

[Company name].
[Company address].

__ I do not want your affiliates to market their products or services to me based on information that you share with them.

A–2—Model Form for Extension Notice

Extending Your Choice To Limit Marketing

• You previously chose to limit our affiliates from marketing their products or services to you based on information that we share with them, such as your income, your account history with us, and your credit score.
• Your choice has expired or is about to expire.
• [Include if applicable.] This limitation does not apply in certain circumstances, such as if you currently do business with one of our affiliates or if you ask to receive information or offers from them.

To extend your choice for another 5 years [include all that apply]:
• Call us toll-free at 877–###–####; or
• Visit our Web site at *www.websiteaddress.com;* or
• Check the box below and mail it to:

[Company name].
[Company address].

__ I want to extend my choice for another 5 years.

A–3—Model Form for Voluntary ''No Marketing'' Notice

Your Choice To Stop Marketing

• You may choose to stop all marketing offers from us and our affiliates.

To stop all marketing offers [include all that apply]:
• Call us toll-free at 877–###–####; or
• Visit our Web site at *www.websiteaddress.com;* or
• Check the box on the form below and mail it to:

[Company name].
[Company address].

__ I do not want you or your affiliates to send me marketing offers.

Federal Deposit Insurance Corporation

12 CFR Chapter III

Authority and Issuance

For the reasons set forth in the joint preamble, the Federal Deposit Insurance Corporation proposes to amend part 334 (as proposed to be added at 69 FR 23399, April 28, 2004) of chapter III of title 12 of the Code of Federal Regulations to read as follows:

PART 334—FAIR CREDIT REPORTING

1. The authority citation for part 334 continues to read as follows:

Authority: 12 U.S.C. 1819 (Tenth) and 1818; 15 U.S.C. 1681b and 1681s.

Subpart A—General Provisions

2. Section 334.1 is revised to read as follows:

§ 334.1 Purpose, scope, and effective dates.

(a) *Purpose.* The purpose of this part is to implement the provisions of the Fair Credit Reporting Act applicable to the institutions listed in paragraph (b)(2) of this section. This part generally applies to institutions that obtain and use information about consumers to determine the consumer's eligibility for products, services, or employment, share such information among affiliates, and furnish such information to consumer reporting agencies.

(b) *Scope.*

(1) [Reserved]

(2) *Institutions covered.* (i) Except as otherwise provided in paragraph (b)(2) of this section, these regulations apply to banks insured by the FDIC (other than District Banks and members of the Federal Reserve System) and insured State branches of foreign banks and any subsidiaries and affiliates of such entities; and other entities and persons with respect to which the FDIC may exercise its enforcement authority under any provision of law. For purposes of this definition, a subsidiary does not include a broker, dealer, person providing insurance, investment company, and investment advisor.

3. Section 334.2 is republished to read as follows:

§ 334.2 Examples.

The examples in this part are not exclusive. Compliance with an example, to the extent applicable, constitutes compliance with this part. Examples in a paragraph illustrate only the issue described in the paragraph and do not illustrate any other issue that may arise in this part.

4. Section 334.3 is revised to read as follows:

§ 334.3 Definitions.

As used in this part, unless the context requires otherwise:

(a) *Act* means the Fair Credit Reporting Act (15 U.S.C. 1681 *et seq.*).

(b) *Affiliate* means any person that is related by common ownership or common corporate control with another person.

(c) *Clear and conspicuous* means reasonably understandable and designed to call attention to the nature and significance of the information presented.

(d) *Company* means any corporation, limited liability company, business trust, general or limited partnership, association, or similar organization.

(e) *Consumer* means an individual.

(f) [Reserved].

(g) [Reserved].

(h) [Reserved].

(i) *Control* of a company means:

(1) Ownership, control, or power to vote 25 percent or more of the outstanding shares of any class of voting security of the company, directly or indirectly, or acting through one or more other persons;

(2) Control in any manner over the election of a majority of the directors, trustees, or general partners (or individuals exercising similar functions) of the company; or

(3) The power to exercise, directly or indirectly, a controlling influence over the management or policies of the company, as the FDIC determines.

(j) *Eligibility information* means any information the communication of which would be a consumer report if the exclusions from the definition of ''consumer report'' in section 603(d)(2)(A) of the Act did not apply.

(k) [Reserved].

(l) *Person* means any individual, partnership, corporation, trust, estate, cooperative, association, government or governmental subdivision or agency, or other entity.

(m) *Pre-existing business relationship* means a relationship between a person and a consumer based on—

(1) A financial contract between the person and the consumer which is in force on the date on which the consumer is sent a solicitation covered by subpart C of this part;

(2) The purchase, rental, or lease by the consumer of the person's goods or services, or a financial transaction (including holding an active account or a policy in force or having another continuing relationship) between the consumer and the person, during the 18-month period immediately preceding the date on which a solicitation covered by subpart C of this part is made or sent to the consumer; or

(3) An inquiry or application by the consumer regarding a product or service offered by that person during the three month period immediately preceding the date on which a solicitation covered by subpart C of this part is made or sent to the consumer.

(n) *Solicitation*—(1) *In general.* Solicitation means marketing initiated by a person to a particular consumer that is—

(i) Based on eligibility information communicated to that person by its affiliate as described in subpart C of this part; and

(ii) Intended to encourage the consumer to purchase or obtain such product or service.

(2) *Exclusion of marketing directed at the general public.* A solicitation does not include communications that are directed at the general public and distributed without the use of eligibility information communicated by an affiliate. For example, television, magazine, and billboard advertisements do not constitute solicitations, even if those communications are intended to encourage consumers to purchase products and services from the person initiating the communications.

(3) *Examples of solicitations.* A solicitation would include, for example, a telemarketing call, direct mail, e-mail, or other form of marketing communication directed to a specific consumer that is based on eligibility information communicated by an affiliate.

(o) *You* means all banks that are insured by the FDIC (other than District Banks and members of the Federal Reserve System); insured State branches of foreign banks and any subsidiaries and affiliates of such entities; and other entities or persons with respect to which the FDIC may exercise its enforcement authority under any provision of law. For purposes of this definition, a subsidiary does not include a broker, dealer, person providing insurance, investment company, and investment advisor.

5. Subpart C is added to read as follows:

Subpart C—Affiliate Use of Information for Marketing

Sec.

Subpart C—Affiliate Use of Information for Marketing

§ 334.20 Affiliate use of eligibility information for marketing.

(a) *General duties of a person communicating eligibility information to an affiliate*—(1) *Notice and opt out.* If you communicate eligibility information about a consumer to your affiliate, your affiliate may not use the information to make or send solicitations to the consumer, unless prior to such use by the affiliate—

(i) You provide a clear and conspicuous notice to the consumer stating that the information may be communicated to and used by your affiliate to make or send solicitations to the consumer about its products and services;

(ii) You provide the consumer a reasonable opportunity and a simple method to ''opt out'' of such use of that information by your affiliate; and

(iii) The consumer has not chosen to opt out.

(2) *Rules of construction*—(i) *In general.* The notice required by this paragraph may be provided either in the name of a person with which the consumer currently does or previously has done business or in one or more common corporate names shared by members of an affiliated group of companies that includes the common corporate name used by that person, and may be provided in the following manner:

(A) You may provide the notice directly to the consumer;

(B) Your agent may provide the notice on your behalf, so long as—

(*1*) Your agent, if your affiliate, does not include any solicitation other than yours on or with the notice, unless it falls within one of the exceptions in paragraph (c) of this section; and

(*2*) Your agent gives the notice in your name or a common name or names used by the family of companies; or

(C) You may provide a joint notice with one or more of your affiliates or under a common corporate name or names used by the family of companies as provided in § 334.24(c).

(ii) *Avoiding duplicate notices.* If Affiliate A shares eligibility information about a consumer with Affiliate B, and Affiliate B shares that same information with Affiliate C, Affiliate B does not have to give an opt out notice to the consumer when it provides eligibility information to Affiliate C, so long as Affiliate A's notice is broad enough to cover Affiliate C's use of the eligibility information to make solicitations to the consumer.

(iii) *Examples of rules of construction.* A, B, and C are affiliates. The consumer currently has a business relationship with affiliate A, but has never done business with affiliates B or C. Affiliate A communicates eligibility information about the consumer to B for purposes of making solicitations. B communicates the information it received from A to C for purposes of making solicitations. In this circumstance, the rules of construction would—

(A) Permit B to use the information to make solicitations if:

(*1*) A has provided the opt out notice directly to the consumer; or

(*2*) B or C has provided the opt out notice on behalf of A.

(B) Permit B or C to use the information to make solicitations if:

(*1*) A's notice is broad enough to cover both B's and C's use of the eligibility information; or

(*2*) A, B, or C has provided a joint opt out notice on behalf of the entire affiliated group of companies.

(C) Not permit B or C to use the information for marketing purposes if B has provided the opt out notice only in B's own name, because no notice would be provided by or on behalf of A.

(b) *General duties of an affiliate receiving eligibility information.* If you receive eligibility information from an affiliate, you may not use the information to make or send solicitations to a consumer, unless the consumer has been provided an opt out notice, as described in paragraph (a) of this section, that applies to your use of eligibility information and the consumer has not opted-out.

(c) *Exceptions.* The provisions of this subpart do not apply if you use eligibility information you receive from an affiliate:

(1) To make or send a marketing solicitation to a consumer with whom you have a pre-existing business relationship as defined in § 334.3(m);

(2) To facilitate communications to an individual for whose benefit you provide employee benefit or other services pursuant to a contract with an employer related to and arising out of the current employment relationship or status of the individual as a participant or beneficiary of an employee benefit plan;

(3) To perform services on behalf of an affiliate, except that this subparagraph shall not be construed as permitting you to make or send solicitations on your behalf or on behalf of an affiliate if you or the affiliate, as applicable, would not be permitted to make or send the solicitation as a result of the election of the consumer to opt out under this subpart;

(4) In response to a communication initiated by the consumer orally, electronically, or in writing;

(5) In response to an affirmative authorization or request by the consumer orally, electronically, or in writing to receive a solicitation; or

(6) If your compliance with this subpart would prevent you from complying with any provision of State insurance laws pertaining to unfair discrimination in any State in which you are lawfully doing business.

(d) *Examples of exceptions*—(1) *Examples of pre-existing business relationships.* (i) If a consumer has an insurance policy with your insurance affiliate that is currently in force, your insurance affiliate has a pre-existing business relationship with the consumer and can therefore use eligibility information it has received from you to make solicitations.

(ii) If a consumer has an insurance policy with your insurance affiliate that has lapsed, your insurance affiliate has a pre-existing business relationship with the consumer for 18 months after the date on which the policy ceases to be in force and can therefore use eligibility information it has received from you to make solicitations for 18 months after the date on which the policy ceases to be in force.

(iii) If a consumer applies to your affiliate for a product or service, or inquires about your affiliate's products or services and provides contact information to your affiliate for receipt of that information, your affiliate has a pre-existing business relationship with the consumer for three months after the date of the inquiry or application and can therefore use eligibility information it has received from you to make solicitations for three months after the date of the inquiry or application.

(iv) If a consumer makes a telephone call to a centralized call center for an affiliated group of companies to inquire about the consumer's bank account, the call does not constitute an inquiry with any affiliate other than the bank that holds the consumer's bank account and does not establish a pre-existing business relationship between the consumer and any affiliate of the bank.

(2) *Examples of consumer-initiated communications.* (i) If a consumer who has an account with you initiates a telephone call to your securities affiliate to request information about brokerage services or mutual funds and provides contact information for receiving that information, your securities affiliate may use eligibility information about the consumer it obtains from you to make solicitations in response to the consumer-initiated call.

(ii) If your affiliate makes the initial marketing call, leaves a message for the consumer to call back, and the consumer responds, the communication is not initiated by the consumer, but by your affiliate.

(iii) If the consumer calls your affiliate to ask about retail locations and hours, but does not request information about your affiliate's products or services, solicitations by your affiliate using eligibility information about the consumer it obtains from you would not be responsive to the consumer-initiated communication.

(3) *Example of consumer affirmative authorization or request.* If a consumer who obtains a mortgage from you requests or affirmatively authorizes information about homeowner's insurance from your insurance affiliate, such authorization or request, whether given to you or to your insurance affiliate, would permit your insurance affiliate to use eligibility information about the consumer it obtains from you to make solicitations about homeowner's insurance to the consumer. A pre-selected check box would not satisfy the requirement for an affirmative authorization or request.

(e) *Prospective application.* The provisions of this subpart shall not prohibit your affiliate from using eligibility information communicated by you to make or send solicitations to a consumer if such information was received by your affiliate prior to [Insert Mandatory Compliance Date].

(f) *Relation to affiliate-sharing notice and opt out.* Nothing in this subpart limits the responsibility of a company to comply with the notice and opt out provisions of section 603(d)(2)(A)(iii) of the Act before it shares information other than transaction or experience information among affiliates to avoid becoming a consumer reporting agency.

§ 334.21 Contents of opt out notice.

(a) *In general.* A notice must be clear, conspicuous, and concise, and must accurately disclose:

(1) That the consumer may elect to limit your affiliate from using eligibility information about the consumer that it obtains from you to make or send solicitations to the consumer;

(2) If applicable, that the consumer's election will apply for a specified period of time and that the consumer will be allowed to extend the election once that period expires; and

(3) A reasonable and simple method for the consumer to opt out.

(b) *Concise*—(1) *In general.* For purposes of this subpart, the term ''concise'' means a reasonably brief expression or statement.

(2) *Combination with other required disclosures.* A notice required by this subpart may be concise even if it is combined with other disclosures required or authorized by federal or state law.

(3) *Use of model form.* The requirement for a concise notice is satisfied by use of a model form contained in Appendix A of this part, although use of the model form is not required.

(c) *Providing a menu of opt out choices.* With respect to the opt out election, you may allow a consumer to choose from a menu of alternatives when opting out of affiliate use of eligibility information for marketing, such as by selecting certain types of affiliates, certain types of information,

or certain methods of delivery from which to opt out, so long as you offer as one of the alternatives the opportunity to opt out with respect to all affiliates, all eligibility information, and all methods of delivery.

(d) *Alternative contents.* If you provide the consumer with a broader right to opt out of marketing than is required by law, you satisfy the requirements of this section by providing the consumer with a clear, conspicuous, and concise notice that accurately discloses the consumer's opt out rights. A model notice is provided in Appendix A of this part for guidance, although use of the model notice is not required.

§ 334.22 Reasonable opportunity to opt out.

(a) *In general.* Before your affiliate uses eligibility information communicated by you to make or send solicitations to a consumer, you must provide the consumer with a reasonable opportunity, following the delivery of the opt out notice, to opt out of such use by your affiliate.

(b) *Examples of a reasonable opportunity to opt out.* You provide a consumer with a reasonable opportunity to opt out if:

(1) *By mail.* You mail the opt out notice to a consumer and give the consumer 30 days from the date you mailed the notice to elect to opt out by any reasonable means.

(2) *By electronic means.* You notify the consumer electronically and give the consumer 30 days after the date that the consumer acknowledges receipt of the electronic notice to elect to opt out by any reasonable means.

(3) *At the time of an electronic transaction.* You provide the opt out notice to the consumer at the time of an electronic transaction, such as a transaction conducted on an Internet Web site, and request that the consumer decide, as a necessary part of proceeding with the transaction, whether to opt out before completing the transaction, so long as you provide a simple process at the Internet web site that the consumer may use at that time to opt out.

(4) *By including in a privacy notice.* You include the opt out notice in a Gramm-Leach-Bliley Act privacy notice and allow the consumer to exercise the opt out within a reasonable period of time and in the same manner as the opt out under the Gramm-Leach-Bliley Act.

(5) *By providing an ''opt in''.* If you have a policy of not allowing an affiliate to use eligibility information to make or send solicitations to the consumer unless the consumer affirmatively consents, you give the consumer the opportunity to ''opt in'' by affirmative consent to such use by your affiliate. You must document the consumer's affirmative consent. A pre-selected check box does not constitute evidence of the consumer's affirmative consent.

§ 334.23 Reasonable and simple methods of opting out.

(a) *Reasonable and simple methods of opting out.* You provide a reasonable and simple method for a consumer to exercise a right to opt out if you—

(1) Designate check-off boxes in a prominent position on the relevant forms included with the opt out notice required by this subpart;

(2) Include a reply form and a self-addressed envelope together with the opt out notice required by this subpart;

(3) Provide an electronic means to opt out, such as a form that can be electronically mailed or processed at your Web site, if the consumer agrees to the electronic delivery of information; or

(4) Provide a toll-free telephone number that consumers may call to opt out.

(b) *Methods of opting out that are not reasonable or simple.* You *do not* provide a reasonable and simple method for exercising an opt out right if you—

(1) Require the consumer to write his or her own letter to you;

(2) Require the consumer to call or write to you to obtain a form for opting out, rather than including the form with the notice; or

(3) Require the consumer who agrees to receive the opt out notice in electronic form only, such as by electronic mail or at your Web site, to opt out solely by telephone or by paper mail.

§ 334.24 Delivery of opt out notices.

(a) *In general.* You must provide an opt out notice so that each consumer can reasonably be expected to receive actual notice. For opt out notices you provide electronically, you may either comply with the electronic disclosure provisions in this subpart or with the provisions in section 101 of the Electronic Signatures in Global and National Commerce Act, 15 U.S.C. 7001 *et seq.*

(b) *Examples of expectation of actual notice.* (1) You may reasonably expect that a consumer will receive actual notice if you:

(i) Hand-deliver a printed copy of the notice to the consumer;

(ii) Mail a printed copy of the notice to the last known mailing address of the consumer; or

(iii) For the consumer who obtains a product or service from you electronically, such as on an Internet Web site, post the notice on your electronic site and require the consumer to acknowledge receipt of the notice as a necessary step to obtaining a particular product or service.

(2) You may *not* reasonably expect that a consumer will receive actual notice if you:

(i) Only post a sign in your branch or office or generally publish advertisements presenting your notice; or

(ii) Send the notice via electronic mail to a consumer who has not agreed to the electronic delivery of information.

(c) *Joint notice with affiliates*—(1) *In general.* You may provide a joint notice from you and one or more of your affiliates, as identified in the notice, so long as the notice is accurate with respect to you and each affiliate.

(2) *Identification of affiliates.* You do not have to list each affiliate providing the joint notice by its name. If each affiliate shares a common name, such as ''ABC,'' then the joint notice may state that it applies to ''all institutions with the ABC name'' or ''all affiliates in the ABC family of companies.'' If, however, an affiliate does not have ABC in its name, then the joint notice must separately identify each family of companies with a common name or the institution.

(d) *Joint relationships*—(1) *In general.* If two or more consumers jointly obtain a product or service from you (joint consumers), the following rules apply:

(i) You may provide a single opt out notice.

(ii) Any of the joint consumers may exercise the right to opt out.

(iii) You may either—

(A) Treat an opt out direction by a joint consumer as applying to all of the associated joint consumers; or

(B) Permit each joint consumer to opt out separately.

(iv) If you permit each joint consumer to opt out separately, you must permit:

(A) One of the joint consumers to opt out on behalf of all of the joint consumers; and

(B) One or more joint consumers to notify you of their opt out directions in a single response.

(v) You must explain in your opt out notice which of the policies in paragraph (d)(1)(iii) of this section you will follow, as well as the information required by paragraph (d)(1)(iv) of this section.

(vi) You may not require *all* joint consumers to opt out before you implement *any* opt out direction.

(vii) If you receive an opt out by a particular joint consumer that does not apply to the others, you may use

eligibility information about the others as long as no eligibility information is used about the consumer who opted out.

(2) *Example.* If consumers A and B, who have different addresses, have a joint checking account with you and arrange for you to send statements to A's address, you may do any of the following, but you must explain in your opt out notice which opt out policy you will follow. You may send a single opt out notice to A's address and:

(i) Treat an opt out direction by A as applying to the entire account. If you do so and A opts out, you may not require B to opt out as well before implementing A's opt out direction.

(ii) Treat A's opt out direction as applying to A only. If you do so, you must also permit:

(A) A and B to opt out for each other; and

(B) A and B to notify you of their opt out directions in a single response (such as on a single form) if they choose to give separate opt out directions.

(iii) If A opts out only for A, and B does not opt out, your affiliate may use information only about B to send solicitations to B, but may not use information about A and B jointly to send solicitations to B.

§ 334.25 Duration and effect of opt out.

(a) *Duration of opt out.* The election of a consumer to opt out shall be effective for the opt out period, which is a period of at least 5 years beginning as soon as reasonably practicable after the consumer's opt out election is received. You may establish an opt out period of more than 5 years, including an opt out period that does not expire unless the consumer revokes it in writing, or if the consumer agrees, electronically.

(b) *Effect of opt out.* A receiving affiliate may not make or send solicitations to a consumer during the opt out period based on eligibility information it receives from an affiliate, except as provided in the exceptions in § 334.20(c) or if the opt out is revoked by the consumer.

(c) *Time of opt out.* A consumer may opt out at any time.

(d) *Termination of relationship.* If the consumer's relationship with you terminates when a consumer's opt out election is in force, the opt out will continue to apply indefinitely, unless revoked by the consumer.

§ 334.26 Extension of opt out.

(a) *In general.* For a consumer who has opted out, a receiving affiliate may not make or send solicitations to the consumer after the expiration of the opt out period based on eligibility information it receives or has received from an affiliate, unless the person responsible for providing the initial opt out notice, or its successor, has given the consumer an extension notice and a reasonable opportunity to extend the opt out, and the consumer does not extend the opt out.

(b) *Duration of extension.* Each opt out extension shall comply with § 334.25(a).

(c) *Contents of extension notice.* The notice provided at extension must be clear, conspicuous, and concise, and must accurately disclose either:

(1) The same contents specified in § 334.21(a) for the initial notice, along with a statement explaining that the consumer's previous opt out has expired or is about to expire, as applicable, and that the consumer must opt out again if the consumer wishes to keep the opt out election in force; or

(2) Each of the items listed below:

(i) That the consumer previously elected to limit your affiliate from using information about the consumer that it obtains from you to make or send solicitations to the consumer;

(ii) That the consumer's election has expired or is about to expire, as applicable;

(iii) That the consumer may elect to extend the consumer's previous election; and

(iv) A reasonable and simple method for the consumer to opt out.

(d) *Timing of the extension notice*—(1) *In general.* An extension notice may be provided to the consumer either—

(i) A reasonable period of time before the expiration of the opt out period; or

(ii) Any time after the expiration of the opt out period but before any affiliate makes or sends solicitations to the consumer that would have been prohibited by the expired opt out.

(2) *Reasonable period of time before expiration.* Providing an extension notice on or with the last annual privacy notice required by the Gramm-Leach-Bliley Act, 15 U.S.C. 6801 *et seq.,* that is provided to the consumer before expiration of the opt out period shall be deemed reasonable in all cases.

(e) *No effect on opt out period.* The opt out period may not be shortened to a period of less than 5 years by sending an extension notice to the consumer before expiration of the opt out period.

§ 334.27 Consolidated and equivalent notices.

(a) *Coordinated and consolidated notices.* A notice required by this subpart may be coordinated and consolidated with any other notice or disclosure required to be issued under any other provision of law, including but not limited to the notice described in section 603(d)(2)(A)(iii) of the Act and the Gramm-Leach-Bliley Act privacy notice.

(b) *Equivalent notices.* A notice or other disclosure that is equivalent to the notice required by this subpart, and that you provide to a consumer together with disclosures required by any other provision of law, shall satisfy the requirements of this subpart.

* * * * *

6. Appendix A to part 334 is added to read as follows:

Appendix A to Part 334—Model Forms for Opt Out Notices

A–1—Model Form for Initial Opt Out Notice

Your Choice To Limit Marketing

• You may limit our affiliates from marketing their products or services to you based on information that we share with them, such as your income, your account history with us, and your credit score.

• [Include if applicable.] Your decision to limit marketing offers from our affiliates will apply for 5 years. Once that period expires, you will be allowed to extend your decision.

• [Include if applicable.] This limitation does not apply in certain circumstances, such as if you currently do business with one of our affiliates or if you ask to receive information or offers from them.

To limit marketing offers [include all that apply]:

• Call us toll-free at 877–###–####; or

• Visit our Web site at *www.websiteaddress.com;* or

• Check the box below and mail it to:

[Company name].
[Company address].

__I do not want your affiliates to market their products or services to me based on information that you share with them.

A–2—Model Form for Extension Notice

Extending Your Choice To Limit Marketing

• You previously chose to limit our affiliates from marketing their products or services to you based on information that we share with them, such as your income, your account history with us, and your credit score.

• Your choice has expired or is about to expire.

• [Include if applicable.] This limitation does not apply in certain circumstances, such as if you currently do business with one of our affiliates or if you ask to receive information or offers from them.

To extend your choice for another 5 years [include all that apply]:

• Call us toll-free at 877–###–####; or

• Visit our Web site at *www.websiteaddress.com;* or

• Check the box below and mail it to:

[Company name].

[Company address].

__I want to extend my choice for another 5 years.

A–3—Model Form for Voluntary ''No Marketing'' Notice

Your Choice To Stop Marketing

• You may choose to stop all marketing offers from us and our affiliates.

To stop all marketing offers [include all that apply]:

• Call us toll-free at 877–###–####; or

• Visit our Web site at *www.websiteaddress.com;* or

• Check the box on the form below and mail it to:

[Company name].
[Company address].

__I do not want you or your affiliates to send me marketing offers.

Office of Thrift Supervision

12 CFR Chapter V

Authority and Issuance

For the reasons set forth in the joint preamble, the Office of Thrift Supervision proposes to amend chapter V of title 12 of the Code of Federal Regulations by amending part 571 (as proposed to be added at 69 FR 23402, April 28, 2004), as follows:

PART 571—FAIR CREDIT REPORTING

1. The authority citation for part 571 is revised to read as follows:

Authority: 12 U.S.C. 1462a, 1463, 1464, 1467a, 1828, 1831p–1, 1881–1884; 15 U.S.C. 1681b, 1681s, and 1681w; 15 U.S.C. 6801 and 6805(b)(1); Sec. 214, Pub. L. 108–159, 117 Stat. 1952.

2. Amend § 571.1 by adding new paragraphs (a) and (b)(2)(ii).

§ 571.1 Purpose, scope, and effective dates.

(a) *Purpose.* The purpose of this part is to implement the provisions of the Fair Credit Reporting Act applicable to the institutions listed in paragraph (b)(2) of this section. This part generally applies to institutions that obtain and use information about consumers to determine the consumer's eligibility for products, services, or employment, share such information among affiliates, and furnish such information to consumer reporting agencies.

(b) * * *

(2) * * *

(ii) Subpart C of this part does not apply to federal savings association operating subsidiaries that are functionally regulated within the meaning of section 5(c)(5) of the Bank Holding Company Act of 1956, as amended (12 U.S.C. 1844(c)(5)).

* * * * *

3. Amend § 571.3 by revising paragraphs (b) and (o) and adding new paragraphs (c), (j), (l), (m), and (n).

§ 571.3 Definitions.

* * * * *

(b) *Affiliate* means any person that is related by common ownership or common corporate control with another person.

(c) *Clear and conspicuous* means reasonably understandable and designed to call attention to the nature and significance of the information presented.

* * * * *

(j) *Eligibility information* means any information the communication of which would be a consumer report if the exclusions from the definition of ''consumer report'' in section 603(d)(2)(A) of the Act did not apply.

* * * * *

(l) *Person* means any individual, partnership, corporation, trust, estate, cooperative, association, government or governmental subdivision or agency, or other entity.

(m) *Pre-existing business relationship* means a relationship between a person and a consumer based on—

(1) A financial contract between the person and the consumer which is in force on the date on which the consumer is sent a solicitation covered by subpart C of this part;

(2) The purchase, rental, or lease by the consumer of the person's goods or services, or a financial transaction (including holding an active account or a policy in force or having another continuing relationship) between the consumer and the person, during the 18-month period immediately preceding the date on which a solicitation covered by subpart C of this part is made or sent to the consumer; or

(3) An inquiry or application by the consumer regarding a product or service offered by that person during the 3-month period immediately preceding the date on which a solicitation covered by subpart C of this part is made or sent to the consumer.

(n) *Solicitation*—(1) *In general.* Solicitation means marketing initiated by a person to a particular consumer that is—

(i) Based on eligibility information communicated to that person by its affiliate as described in subpart C of this part; and

(ii) Intended to encourage the consumer to purchase or obtain such product or service.

(2) *Exclusion of marketing directed at the general public.* A solicitation does not include communications that are directed at the general public and distributed without the use of eligibility information communicated by an affiliate. For example, television, magazine, and billboard advertisements do not constitute solicitations, even if those communications are intended to encourage consumers to purchase products and services from the person initiating the communications.

(3) *Examples of solicitations.* A solicitation would include, for example, a telemarketing call, direct mail, e-mail, or other form of marketing communication directed to a specific consumer that is based on eligibility information communicated by an affiliate.

(o) *You* means savings associations whose deposits are insured by the Federal Deposit Insurance Corporation (and Federal savings association operating subsidiaries in accordance with § 559.3(h)(1) of this chapter). For purposes of subpart C of this part, ''You'' does not include a Federal savings association operating subsidiary that is functionally regulated within the meaning of section 5(c)(5) of the Bank Holding Company Act of 1956, as amended (12 U.S.C. 1844(c)(5)).

4. Add a new subpart C to part 571 to read as follows:

Subpart C—Affiliate Use of Information for Marketing

Sec.

Subpart C—Affiliate Use of Information for Marketing

§ 571.20 Affiliate use of eligibility information for marketing.

(a) *General duties of a person communicating eligibility information to an affiliate*—(1) *Notice and opt out.* If you communicate eligibility information about a consumer to your affiliate, your affiliate may not use the information to make or send solicitations to the consumer, unless prior to such use by the affiliate—

(i) You provide a clear and conspicuous notice to the consumer stating that the information may be communicated to and used by your affiliate to make or send solicitations to the consumer about its products and services;

(ii) You provide the consumer a reasonable opportunity and a simple method to ''opt out'' of such use of that information by your affiliate; and

(iii) The consumer has not chosen to opt out.

(2) *Rules of construction*—(i) *In general.* The notice required by this paragraph (a)(2) may be provided either in the name of a person with which the consumer currently does or previously has done business or in one or more common corporate names shared by members of an affiliated group of companies that includes the common corporate name used by that person, and may be provided in the following manner:

(A) You may provide the notice directly to the consumer;

(B) Your agent may provide the notice on your behalf, so long as—

(*1*) Your agent, if your affiliate, does not include any solicitation other than yours on or with the notice, unless it falls within one of the exceptions in paragraph (c) of this section; and

(*2*) Your agent gives the notice in your name or a common name or names used by the family of companies; or

(C) You may provide a joint notice with one or more of your affiliates or under a common corporate name or names used by the family of companies as provided in § 571.24(c).

(ii) *Avoid duplicating notices.* If Affiliate A communicates eligibility information about a consumer to Affiliate B, and Affiliate B communicates that same information to Affiliate C, Affiliate B does not have to give an opt out notice to the consumer when it provides eligibility information to Affiliate C, so long as Affiliate A's notice is broad enough to cover Affiliate C's use of the eligibility information to make solicitations to the consumer.

(iii) *Examples of rules of construction.* A, B, and C are affiliates. The consumer currently has a business relationship with A, but has never done business with B or C. A communicates eligibility information about the consumer to B for purposes of B making solicitations on B's behalf. B communicates the information it received from A to C for purposes of C making solicitations on C's behalf. In this circumstance, the rules of construction would—

(A) Permit B to use the information to make solicitations on B's behalf if:

(*1*) A has provided the opt out notice directly to the consumer; or

(*2*) B or C has provided the opt out notice on behalf of A.

(B) Permit B or C to use the information to make solicitations on B's and C's behalf respectively if:

(*1*) A's notice is broad enough to cover both B's and C's use of the eligibility information; or

(*2*) A, B, or C has provided a joint opt out notice on behalf of the entire affiliated group of companies.

(C) Not permit B or C to use the information for marketing purposes if B has provided the opt out notice only in B's own name, because no notice would have been provided by or on behalf of A.

(b) *General duties of an affiliate receiving eligibility information.* If you receive eligibility information from an affiliate, you may not use the information to make or send solicitations to a consumer, unless the consumer has been provided an opt out notice, as described in paragraph (a) of this section, that applies to your use of eligibility information and the consumer has not opted out.

(c) *Exceptions.* The provisions of this subpart do not apply if you use eligibility information you receive from an affiliate:

(1) To make or send a marketing solicitation to a consumer with whom you have a pre-existing business relationship as defined in § 571.3(m);

(2) To facilitate communications to an individual for whose benefit you provide employee benefit or other services pursuant to a contract with an employer related to and arising out of the current employment relationship or status of the individual as a participant or beneficiary of an employee benefit plan;

(3) To perform services on behalf of an affiliate, except that this paragraph (c)(3) shall not be construed as permitting you to make or send solicitations on your behalf or on behalf of an affiliate if you or the affiliate, as applicable, would not be permitted to make or send the solicitation as a result of the election of the consumer to opt out under this subpart;

(4) In response to a communication initiated by the consumer orally, electronically, or in writing;

(5) In response to an affirmative authorization or request by the consumer orally, electronically, or in writing to receive a solicitation; or

(6) If your compliance with this subpart would prevent you from complying with any provision of State insurance laws pertaining to unfair discrimination in any State in which you are lawfully doing business.

(d) *Examples of exceptions*—(1) *Examples of pre-existing business relationships.*

(i) If a consumer has an insurance policy with your insurance affiliate that is currently in force, your insurance affiliate has a pre-existing business relationship with the consumer and can therefore use eligibility information it has received from you to make solicitations.

(ii) If a consumer has an insurance policy with your insurance affiliate that has lapsed, your insurance affiliate has a pre-existing business relationship with the consumer for 18 months after the date on which the policy ceases to be in force and can therefore use eligibility information it has received from you to make solicitations for 18 months after the date on which the policy ceases to be in force.

(iii) If a consumer applies to your affiliate for a product or service, or inquires about your affiliate's products or services and provides contact information to your affiliate for receipt of that information, your affiliate has a pre-existing business relationship with the consumer for 3 months after the date of the inquiry or application and can therefore use eligibility information it has received from you to make solicitations for 3 months after the date of the inquiry or application.

(iv) If a consumer makes a telephone call to a centralized call center for an affiliated group of companies to inquire about the consumer's bank account, the call does not constitute an inquiry with any affiliate other than the bank that holds the consumer's bank account and does not establish a pre-existing business relationship between the consumer and any affiliate of the bank.

(2) *Examples of consumer-initiated communications.* (i) If a consumer who has an account with you initiates a telephone call to your securities affiliate to request information about brokerage services or mutual funds and provides contact information for receiving that information, your securities affiliate may use eligibility information about the consumer it obtains from you to make solicitations in response to the consumer-initiated call.

(ii) If your affiliate makes the initial marketing call, leaves a message for the consumer to call back, and the consumer responds, the communication is not initiated by the consumer, but by your affiliate.

(iii) If the consumer calls your affiliate to ask about retail locations and hours, but does not request information about your affiliate's products or services, solicitations by your affiliate using eligibility information about the consumer it obtains from you would not be responsive to the consumer-initiated communication.

(3) *Example of consumer affirmative authorization or request.* If a consumer who obtains a mortgage from you

requests or affirmatively authorizes information about homeowner's insurance from your insurance affiliate, such authorization or request, whether given to you or to your insurance affiliate, would permit your insurance affiliate to use eligibility information about the consumer it obtains from you to make solicitations about homeowner's insurance to the consumer. A pre-selected check box would not satisfy the requirement for an affirmative authorization or request.

(e) *Prospective application.* The provisions of this subpart shall not prohibit your affiliate from using eligibility information communicated by you to make or send solicitations to a consumer if such information was received by your affiliate prior to [Insert Mandatory Compliance Date].

(f) *Relation to affiliate-sharing notice and opt out.* Nothing in this subpart limits the responsibility of a company to comply with the notice and opt out provisions of section 603(d)(2)(A)(iii) of the Act before it shares information other than transaction or experience information among affiliates to avoid becoming a consumer reporting agency.

§ 571.21 Contents of opt out notice.

(a) *In general.* A notice must be clear, conspicuous, and concise, and must accurately disclose:

(1) That the consumer may elect to limit your affiliate from using eligibility information about the consumer that it obtains from you to make or send solicitations to the consumer;

(2) If applicable, that the consumer's election will apply for a specified period of time and that the consumer will be allowed to extend the election once that period expires; and

(3) A reasonable and simple method for the consumer to opt out.

(b) *Concise*—(1) *In general.* For purposes of this subpart, the term ''concise'' means a reasonably brief expression or statement.

(2) *Combination with other required disclosures.* A notice required by this subpart may be concise even if it is combined with other disclosures required or authorized by Federal or State law.

(3) *Use of model form.* The requirement for a concise notice is satisfied by use of a model form contained in Appendix A of this part, although use of the model form is not required.

(c) *Providing a menu of opt out choices.* With respect to the opt out election, you may allow a consumer to choose from a menu of alternatives when opting out of affiliate use of eligibility information for marketing, such as by selecting certain types of affiliates, certain types of information, or certain methods of delivery from which to opt out, so long as you offer as one of the alternatives the opportunity to opt out with respect to all affiliates, all eligibility information, and all methods of delivery.

(d) *Alternative contents.* If you provide the consumer with a broader right to opt out of marketing than is required by law, you satisfy the requirements of this section by providing the consumer with a clear, conspicuous, and concise notice that accurately discloses the consumer's opt out rights. A model notice is provided in Appendix A–3 of this part for guidance, although use of the model notice is not required.

§ 571.22 Reasonable opportunity to opt out.

(a) *In general.* Before your affiliate uses eligibility information communicated by you to make or send solicitations to a consumer, you must provide the consumer with a reasonable opportunity, following the delivery of the opt out notice, to opt out of such use by your affiliate.

(b) *Examples of a reasonable opportunity to opt out.* You provide a consumer with a reasonable opportunity to opt out if:

(1) *By mail.* You mail the opt out notice to a consumer and give the consumer 30 days from the date you mailed the notice to elect to opt out by any reasonable means.

(2) *By electronic means.* You notify the consumer electronically and give the consumer 30 days after the date that the consumer acknowledges receipt of the electronic notice to elect to opt out by any reasonable means.

(3) *At the time of an electronic transaction.* You provide the opt out notice to the consumer at the time of an electronic transaction, such as a transaction conducted on an Internet Web site, and request that the consumer decide, as a necessary part of proceeding with the transaction, whether to opt out before completing the transaction, so long as you provide a simple process at the Internet web site that the consumer may use at that time to opt out.

(4) *By including in a privacy notice.* You include the opt out notice in a Gramm-Leach-Bliley Act privacy notice and allow the consumer to exercise the opt out within a reasonable period of time and in the same manner as the opt out under the Gramm-Leach-Bliley Act.

(5) *By providing an ''opt in''.* If you have a policy of not allowing an affiliate to use eligibility information to make or send solicitations to the consumer unless the consumer affirmatively consents, you give the consumer the opportunity to ''opt in'' by affirmative consent to such use by your affiliate. You must document the consumer's affirmative consent. A pre-selected check box does not constitute evidence of the consumer's affirmative consent.

§ 571.23 Reasonable and simple methods of opting out.

(a) *Reasonable and simple methods of opting out.* You provide a reasonable and simple method for a consumer to exercise a right to opt out if you—

(1) Designate check-off boxes in a prominent position on the relevant forms included with the opt out notice required by this subpart;

(2) Include a reply form and a self-addressed envelope together with the opt out notice required by this subpart;

(3) Provide an electronic means to opt out, such as a form that can be electronically mailed or processed at your web site, if the consumer agrees to the electronic delivery of information; or

(4) Provide a toll-free telephone number that consumers may call to opt out.

(b) *Methods of opting out that are not reasonable or simple.* You *do not* provide a reasonable and simple method for exercising an opt out right if you—

(1) Require the consumer to write his or her own letter to you;

(2) Require the consumer to call or write to you to obtain a form for opting out, rather than including the form with the notice; or

(3) Require the consumer who agrees to receive the opt out notice in electronic form only, such as by electronic mail or at your web site, to opt out solely by telephone or by paper mail.

§ 571.24 Delivery of opt out notices.

(a) *In general.* You must provide an opt out notice so that each consumer can reasonably be expected to receive actual notice. For opt out notices you provide electronically, you may either comply with the electronic disclosure provisions in this subpart or with the provisions in section 101 of the Electronic Signatures in Global and National Commerce Act, 15 U.S.C. 7001 *et seq.*

(b) *Examples of expectation of actual notice.* (1) You may reasonably expect that a consumer will receive actual notice if you:

(i) Hand-deliver a printed copy of the notice to the consumer;

(ii) Mail a printed copy of the notice to the last known mailing address of the consumer; or

(iii) For the consumer who obtains a product or service from you electronically, such as on an Internet Web site, post the notice on your electronic site and require the consumer to acknowledge receipt of the notice as a necessary step to obtaining a particular product or service.

(2) You may *not* reasonably expect that a consumer will receive actual notice if you:

(i) Only post a sign in your branch or office or generally publish advertisements presenting your notice; or

(ii) Send the notice via electronic mail to a consumer who has not agreed to the electronic delivery of information.

(c) *Joint notice with affiliates*—(1) *In general.* You may provide a joint notice from you and one or more of your affiliates, as identified in the notice, so long as the notice is accurate with respect to you and each affiliate.

(2) *Identification of affiliates.* You do not have to list each affiliate providing the joint notice by its name. If each affiliate shares a common name, such as ''ABC,'' then the joint notice may state that it applies to ''all institutions with the ABC name'' or ''all affiliates in the ABC family of companies.'' If, however, an affiliate does not have ABC in its name, then the joint notice must separately identify each family of companies with a common name or the institution.

(d) *Joint relationships*—(1) *In general.* If two or more consumers jointly obtain a product or service from you (joint consumers), the following rules apply:

(i) You may provide a single opt out notice.

(ii) Any of the joint consumers may exercise the right to opt out.

(iii) You may either—

(A) Treat an opt out direction by a joint consumer as applying to all of the associated joint consumers; or

(B) Permit each joint consumer to opt out separately.

(iv) If you permit each joint consumer to opt out separately, you must permit:

(A) One of the joint consumers to opt out on behalf of all of the joint consumers; and

(B) One or more joint consumers to notify you of their opt out directions in a single response.

(v) You must explain in your opt out notice which of the policies in paragraph (d)(1)(iii) of this section you will follow, as well as the information required by paragraph (d)(1)(iv) of this section.

(vi) You may not require *all* joint consumers to opt out before you implement any opt out direction.

(vii) If you receive an opt out by a particular joint consumer that does not apply to the others, you may use eligibility information about the others as long as no eligibility information is used about the consumer who opted out.

(2) *Example.* If consumers A and B, who have different addresses, have a joint checking account with you and arrange for you to send statements to A's address, you may do any of the following, but you must explain in your opt out notice which opt out policy you will follow. You may send a single opt out notice to A's address and:

(i) Treat an opt out direction by A as applying to the entire account. If you do so and A opts out, you may not require B to opt out as well before implementing A's opt out direction.

(ii) Treat A's opt out direction as applying to A only. If you do so, you must also permit:

(A) A and B to opt out for each other; and

(B) A and B to notify you of their opt out directions in a single response (such as on a single form) if they choose to give separate opt out directions.

(iii) If A opts out only for A, and B does not opt out, your affiliate may use information only about B to send solicitations to B, but may not use information about A and B jointly to send solicitations to B.

§ 571.25 Duration and effect of opt out.

(a) *Duration of opt out.* The election of a consumer to opt out shall be effective for the opt out period, which is a period of at least 5 years beginning as soon as reasonably practicable after the consumer's opt out election is received. You may establish an opt out period of more than 5 years, including an opt out period that does not expire unless the consumer revokes it in writing, or if the consumer agrees, electronically.

(b) *Effect of opt out.* A receiving affiliate may not make or send solicitations to a consumer during the opt out period based on eligibility information it receives from an affiliate, except as provided in the exceptions in § 571.20(c) or if the opt out is revoked by the consumer.

(c) *Time of opt out.* A consumer may opt out at any time.

(d) *Termination of relationship.* If the consumer's relationship with you terminates when a consumer's opt out election is in force, the opt out will continue to apply indefinitely, unless revoked by the consumer.

§ 571.26 Extension of opt out.

(a) *In general.* For a consumer who has opted out, a receiving affiliate may not make or send solicitations to the consumer after the expiration of the opt out period based on eligibility information it receives or has received from an affiliate, unless the person responsible for providing the initial opt out notice, or its successor, has given the consumer an extension notice and a reasonable opportunity to extend the opt out, and the consumer does not extend the opt out.

(b) *Duration of extension.* Each opt out extension shall comply with § 571.25(a).

(c) *Contents of extension notice.* The notice provided at extension must be clear, conspicuous, and concise, and must accurately disclose either:

(1) The same contents specified in § 571.21(a) for the initial notice, along with a statement explaining that the consumer's previous opt out has expired or is about to expire, as applicable, and that the consumer must opt out again if the consumer wishes to keep the opt out election in force; or

(2) Each of the items listed below:

(i) That the consumer previously elected to limit your affiliate from using information about the consumer that it obtains from you to make or send solicitations to the consumer;

(ii) That the consumer's election has expired or is about to expire, as applicable;

(iii) That the consumer may elect to extend the consumer's previous election; and

(iv) A reasonable and simple method for the consumer to opt out.

(d) *Timing of the extension notice*—(1) *In general.* An extension notice may be provided to the consumer at either—

(i) A reasonable period of time before the expiration of the opt out period; or

(ii) Any time after the expiration of the opt out period but before any affiliate makes or sends solicitations to the consumer that would have been prohibited by the expired opt out.

(2) *Reasonable period of time before expiration.* Providing an extension notice on or with the last annual privacy notice required by the Gramm-Leach-Bliley Act, 15 U.S.C. 6801 *et seq.*, that is provided to the consumer before expiration of the opt out period shall be deemed reasonable in all cases.

(e) *No effect on opt out period.* The fact that you send an extension notice to the consumer before expiration of the opt out period and the consumer fails to extend the opt out, does not shorten the opt out period.

§ 571.27 Consolidated and equivalent notices.

(a) *Coordinated and consolidated notices.* A notice required by this subpart may be coordinated and

consolidated with any other notice or disclosure required to be issued under any other provision of law, including but not limited to the notice described in section 603(d)(2)(A)(iii) of the Act and the Gramm-Leach-Bliley Act privacy notice.

(b) *Equivalent notices.* A notice or other disclosure that is equivalent to the notice required by this subpart, and that you provide to a consumer together with disclosures required by any other provision of law, shall satisfy the requirements of this subpart C.

5. Add a new Appendix A to part 571 to read as follows:

Appendix A to Part 571—Model Forms for Opt Out Notices

A–1 Model Form for Initial Opt Out Notice
A–2 Model Form for Extension Notice
A–3 Model Form for Voluntary ''No Marketing'' Notice

A–1—Model Form for Initial Opt Out Notice

Your Choice To Limit Marketing

• You may limit our affiliates from marketing their products or services to you based on information that we share with them, such as your income, your account history with us, and your credit score.

• [Include if applicable.] Your decision to limit marketing offers from our affiliates will apply for 5 years. Once that period expires, you will be allowed to extend your decision.

• [Include if applicable.] This limitation does not apply in certain circumstances, such as if you currently do business with one of our affiliates or if you ask to receive information or offers from them.

To limit marketing offers [include all that apply]:

• Call us toll-free at 877–###–####; or

• Visit our Web site at *www.websiteaddress.com;* or

• Check the box below and mail it to:

[Company name].
[Company address].

__I do not want your affiliates to market their products or services to me based on information that you share with them.

A–2—Model Form for Extension Notice

Extending Your Choice To Limit Marketing

• You previously chose to limit our affiliates from marketing their products or services to you based on information that we share with them, such as your income, your account history with us, and your credit score.

• Your choice has expired or is about to expire.

• [Include if applicable.] This limitation does not apply in certain circumstances, such as if you currently do business with one of our affiliates or if you ask to receive information or offers from them.

To extend your choice for another 5 years [include all that apply]:

• Call us toll-free at 877–###–####; or

• Visit our Web site at *www.websiteaddress.com;* or

• Check the box below and mail it to:

[Company name].
[Company address].

__I want to extend my choice for another 5 years.

A–3—Model Form for Voluntary ''No Marketing'' Notice

Your Choice To Stop Marketing

• You may choose to stop all marketing offers from us and our affiliates.

To stop all marketing offers [include all that apply]:

• Call us toll-free at 877–###–####; or

• Visit our Web site at *www.websiteaddress.com;* or

• Check the box on the form below and mail it to:

[Company name].
[Company address].

__I do not want you or your affiliates to send me marketing offers.

National Credit Union Administration

Authority and Issuance

For the reasons set forth in the joint preamble, NCUA proposes to amend title 12, chapter VII, of the Code of Federal Regulations by amending part 717 (as proposed to be added at 69 FR 23405, April 28, 2004) to read as follows:

PART 717—FAIR CREDIT REPORTING

1. The authority citation for part 717 is revised to read as follows:

Authority: 15 U.S.C. 1681a, 1681b, 1681s, 1681w, 6801 and 6805(b).

Subpart A—General Provisions

2. Section 717.1 is revised by adding a new paragraph (a) to read as follows:

§ 717.1 Purpose, scope, and effective dates.

(a) *Purpose.* This part implements the provisions of the Fair Credit Reporting Act applicable to Federal credit unions. This part applies to Federal credit unions that obtain and use information about consumers to determine the consumer's eligibility for products, services, or employment, share such information among affiliates, and furnish such information to consumer reporting agencies.

* * * * *

3. Section 717.2 is republished to read as follows:

§ 717.2 Examples.

The examples in this part are not exclusive. Compliance with an example, to the extent applicable, constitutes compliance with this part. Examples in a paragraph illustrate only the issue described in the paragraph and do not illustrate any other issue that may arise in this part.

4. Section 717.3 is revised to read as follows:

§ 717.3 Definitions.

As used in this part, unless the context requires otherwise:

(a) *Act* means the Fair Credit Reporting Act (15 U.S.C. 1681 *et seq.*).

(b) *Affiliate* means any person that is related by common ownership or common corporate control with another person.

(c) *Clear and conspicuous* means reasonably understandable and designed to call attention to the nature and significance of the information presented.

(d) *Company* means any corporation, limited liability company, business trust, general or limited partnership, association, or similar organization.

(e) *Consumer* means an individual.

(f) [Reserved].

(g) [Reserved].

(h) [Reserved].

(i) *Control* of a company means:

(1) Ownership, control, or power to vote 25 percent or more of the outstanding shares of any class of voting security of the company, directly or indirectly, or acting through one or more other persons;

(2) Control in any manner over the election of a majority of the directors, trustees, or general partners (or individuals exercising similar functions) of the company; or

(3) The power to exercise, directly or indirectly, a controlling influence over the management or policies of the company, as the Board determines.

(4) Example. NCUA will presume a credit union has a controlling influence over the management or policies of a CUSO, if the CUSO is 67% owned by credit unions.

(j) *Eligibility information* means any information the communication of which would be a consumer report if the exclusions from the definition of ''consumer report'' in section 603(d)(2)(A) of the Act did not apply.

(k) [Reserved].

(l) *Person* means any individual, partnership, corporation, trust, estate, cooperative, association, government or governmental subdivision or agency, or other entity.

(m) *Pre-existing business relationship* means a relationship between a person and a consumer based on—

(1) A financial contract between the person and the consumer that is in force on the date on which the consumer is sent a solicitation covered by subpart C of this part;

(2) The purchase, rental, or lease by the consumer of the person's goods or services, or a financial transaction

(including holding an active account or a policy in force or having another continuing relationship) between the consumer and the person, during the 18-month period immediately preceding the date on which a solicitation covered by subpart C of this part is made or sent to the consumer; or

(3) An inquiry or application by the consumer regarding a product or service offered by that person during the 3-month period immediately preceding the date on which a solicitation covered by subpart C of this part is made or sent to the consumer.

(n) *Solicitation*—(1) *In general.* Solicitation means marketing initiated by a person to a particular consumer that is—

(i) Based on eligibility information communicated to that person by its affiliate as described in subpart C of this part; and

(ii) Intended to encourage the consumer to purchase or obtain such product or service.

(2) *Exclusion of marketing directed at the general public.* A solicitation does not include communications that are directed at the general public and distributed without the use of eligibility information communicated by an affiliate. For example, television, magazine, and billboard advertisements do not constitute solicitations, even if those communications are intended to encourage consumers to purchase products and services from the person initiating the communications.

(3) *Examples of solicitations.* A solicitation would include, for example, a telemarketing call, direct mail, e-mail, or other form of marketing communication directed to a specific consumer that is based on eligibility information communicated by an affiliate.

(o) *You* means a Federal credit union.

5. A new subpart C is added to part 717 to read as follows:

Subpart C—Affiliate Use of Information for Marketing

Sec.

Subpart C—Affiliate Use of Information for Marketing

§ 717.20 Affiliate use of eligibility information for marketing.

(a) *General duties of a person communicating eligibility information to an affiliate*—(1) *Notice and opt out.* If you communicate eligibility information about a consumer to your affiliate, your affiliate may not use the information to make or send solicitations to the consumer, unless before such use by the affiliate—

(i) You provide a clear and conspicuous notice to the consumer stating that the information may be communicated to and used by your affiliate to make or send solicitations to the consumer about its products and services;

(ii) You provide the consumer a reasonable opportunity and a simple method to ''opt out'' of such use of that information by your affiliate; and

(iii) The consumer has not chosen to opt out.

(2) *Rules of construction*—(i) *In general.* The notice required by this paragraph may be provided either in the name of a person with which the consumer currently does or previously has done business or in one or more common corporate names shared by members of an affiliated group of companies that includes the common corporate name used by that person, and may be provided in the following manner:

(A) You may provide the notice directly to the consumer;

(B) Your agent may provide the notice on your behalf, so long as—

(*1*) Your agent, if your affiliate, does not include any solicitation other than yours on or with the notice, unless it falls within one of the exceptions in paragraph (c) of this section; and

(*2*) Your agent gives the notice in your name or a common name or names used by the family of companies; or

(C) You may provide a joint notice with one or more of your affiliates or under a common corporate name or names used by the family of companies as provided in § 717.24(c).

(ii) *Avoiding duplicate notices.* If Affiliate X communicates eligibility information about a consumer to Affiliate Y, and Affiliate Y communicates that same information to Affiliate Z, Affiliate Y does not have to give an opt out notice to the consumer when it provides eligibility information to Affiliate Z, so long as Affiliate X's notice is broad enough to cover Affiliate Z's use of the eligibility information to make solicitations to the consumer.

(iii) *Examples of rules of construction.* X, Y, and Z are affiliates. The consumer currently has a business relationship with affiliate X, but has never done business with affiliates Y or Z. Affiliate X communicates eligibility information about the consumer to Y for purposes of making solicitations. Y communicates the information it received from X to Z for purposes of making solicitations. In this circumstance, the rules of construction would—

(A) Permit Y to use the information to make solicitations if:

(*1*) X has provided the opt out notice directly to the consumer; or

(*2*) Y or Z has provided the opt out notice on behalf of X.

(B) Permit Y or Z to use the information to make solicitations if:

(*1*) X's notice is broad enough to cover both Y's and Z's use of the eligibility information; or

(*2*) X, Y, or Z has provided a joint opt out notice on behalf of the entire affiliated group of companies.

(C) Not permit Y or Z to use the information for marketing purposes if Y has provided the opt out notice only in Y's own name, because no notice would have been provided by or on behalf of X.

(b) *General duties of an affiliate receiving eligibility information.* If you receive eligibility information from an affiliate, you may not use the information to make or send solicitations to a consumer, unless the consumer has been provided an opt out notice, as described in paragraph (a) of this section, that applies to your use of eligibility information and the consumer has not opted-out.

(c) *Exceptions.* The provisions of this subpart do not apply if you use eligibility information you receive from an affiliate:

(1) To make or send a marketing solicitation to a consumer with whom you have a pre-existing business relationship as defined in § 717.3(m);

(2) To facilitate communications to an individual for whose benefit you provide employee benefit or other services pursuant to a contract with an employer related to and arising out of the current employment relationship or status of the individual as a participant or beneficiary of an employee benefit plan;

(3) To perform services on behalf of an affiliate, except that this subparagraph will not be construed as permitting you to make or send solicitations on your behalf or on behalf of an affiliate if you or the affiliate, as applicable, would not be permitted to make or send the solicitation as a result

of the election of the consumer to opt out under this subpart;

(4) In response to a communication initiated by the consumer orally, electronically, or in writing;

(5) In response to an affirmative authorization or request by the consumer orally, electronically, or in writing to receive a solicitation; or

(6) If your compliance with this subpart would prevent you from complying with any provision of state insurance laws pertaining to unfair discrimination in any state in which you are lawfully doing business.

(d) *Examples of exceptions.*—(1) *Examples of pre-existing business relationships.* (i) If a consumer has an insurance policy with your insurance agency affiliate that is currently in force, your insurance agency affiliate has a pre-existing business relationship with the consumer and can therefore use eligibility information it has received from you to make solicitations.

(ii) If a consumer has an insurance policy with your insurance agency affiliate that has lapsed, your insurance agency affiliate has a pre-existing business relationship with the consumer for 18 months after the date on which the policy ceases to be in force and can therefore use eligibility information it has received from you to make solicitations for 18 months after the date on which the policy ceases to be in force.

(iii) If a consumer applies to your affiliate for a product or service, or inquires about your affiliate's products or services and provides contact information to your affiliate for receipt of that information, your affiliate has a pre-existing business relationship with the consumer for 3 months after the date of the inquiry or application and can therefore use eligibility information it has received from you to make solicitations for 3 months after the date of the inquiry or application.

(iv) If a consumer makes a telephone call to a centralized call center for an affiliated group of companies to inquire about the consumer's credit union account, the call does not constitute an inquiry with any affiliate other than the credit union that holds the consumer's credit union account and does not establish a pre-existing business relationship between the consumer and any affiliate of the credit union.

(2) *Examples of consumer-initiated communications.* (i) If a consumer who has an account with you initiates a telephone call to your securities affiliate to request information about brokerage services or mutual funds and provides contact information for receiving that information, your securities affiliate may use eligibility information about the consumer it obtains from you to make solicitations in response to the consumer-initiated call.

(ii) If your affiliate makes the initial marketing call, leaves a message for the consumer to call back, and the consumer responds, the communication is not initiated by the consumer, but by your affiliate.

(iii) If the consumer calls your affiliate to ask about retail locations and hours, but does not request information about your affiliate's products or services, solicitations by your affiliate using eligibility information about the consumer it obtains from you would not be responsive to the consumer-initiated communication.

(3) *Example of consumer affirmative authorization or request.* If a consumer who obtains a mortgage from you requests or affirmatively authorizes information about homeowner's insurance from your insurance agency affiliate, such authorization or request, whether given to you or to your insurance agency affiliate, would permit your affiliate to use eligibility information about the consumer it obtains from you to make solicitations about homeowner's insurance to the consumer. A pre-selected check box would not satisfy the requirement for an affirmative authorization or request.

(e) *Prospective application.* The provisions of this subpart do not prohibit your affiliate from using eligibility information communicated by you to make or send solicitations to a consumer if such information was received by your affiliate before [Insert Mandatory Compliance Date].

(f) *Relation to affiliate-sharing notice and opt out.* Nothing in this subpart limits your responsibility to comply with the notice and opt out provisions of section 603(d)(2)(A)(iii) of the Act before you share information other than transaction or experience information among affiliates to avoid becoming a consumer reporting agency.

§ 717.21 Contents of opt out notice.

(a) *In general.* A notice must be clear, conspicuous, and concise, and must accurately disclose:

(1) That the consumer may elect to limit your affiliate from using eligibility information about the consumer that it obtains from you to make or send solicitations to the consumer;

(2) If applicable, that the consumer's election applies for a specified period of time and that the consumer can extend the election once that period expires; and

(3) A reasonable and simple method for the consumer to opt out.

(b) *Concise*—(1) *In general.* For purposes of this subpart, the term ''concise'' means a reasonably brief expression or statement.

(2) *Combination with other required disclosures.* A notice required by this subpart may be concise even if it is combined with other disclosures required or authorized by Federal or State law.

(3) *Use of model form.* Use of a model form contained in Appendix A of this part satisfies the requirement for a concise notice, although use of the model form is not required.

(c) *Providing a menu of opt out choices.* With respect to the opt out election, you may allow a consumer to choose from a menu of alternatives when opting out of affiliate use of eligibility information for marketing, such as by selecting certain types of affiliates, certain types of information, or certain methods of delivery from which to opt out, so long as you offer as one of the alternatives the opportunity to opt out with respect to all affiliates, all eligibility information, and all methods of delivery.

(d) *Alternative contents.* If you provide the consumer with a broader right to opt out of marketing than is required by law, you satisfy the requirements of this section by providing the consumer with a clear, conspicuous, and concise notice that accurately discloses the consumer's opt out rights. A model notice is provided in Appendix A–3 of this part for guidance, although use of the model notice is not required.

§ 717.22 Reasonable opportunity to opt out.

(a) *In general.* Before your affiliate uses eligibility information communicated by you to make or send solicitations to a consumer, you must provide the consumer with a reasonable opportunity, following the delivery of the opt out notice, to opt out of such use by your affiliate.

(b) *Examples of a reasonable opportunity to opt out.* You provide a consumer with a reasonable opportunity to opt out if:

(1) *By mail.* You mail the opt out notice to a consumer and give the consumer 30 days from the date you mailed the notice to elect to opt out by any reasonable means.

(2) *By electronic means.* You notify the consumer electronically and give the consumer 30 days after the date that the consumer acknowledges receipt of the electronic notice to elect to opt out by any reasonable means.

(3) *At the time of an electronic transaction.* You provide the opt out

notice to the consumer at the time of an electronic transaction, such as a transaction conducted on an Internet Web site, and request that the consumer decide, as a necessary part of proceeding with the transaction, whether to opt out before completing the transaction, so long as you provide a simple process at the Internet web site that the consumer may use at that time to opt out.

(4) *By including in a privacy notice.* You include the opt out notice in a Gramm-Leach-Bliley Act privacy notice and allow the consumer to exercise the opt out within a reasonable period of time and in the same manner as the opt out under the Gramm-Leach-Bliley Act, 15 U.S.C. 6801 *et seq.*

(5) *By providing an ''opt in.''* If you have a policy of not allowing an affiliate to use eligibility information to make or send solicitations to the consumer unless the consumer affirmatively consents, you give the consumer the opportunity to ''opt in'' by affirmative consent to such use by your affiliate. You must document the consumer's affirmative consent. A pre-selected check box does not constitute evidence of the consumer's affirmative consent.

§ 717.23 Reasonable and simple methods of opting out.

(a) *Reasonable and simple methods of opting out.* You provide a reasonable and simple method for a consumer to exercise a right to opt out if you—

(1) Designate check-off boxes in a prominent position on the relevant forms included with the opt out notice required by this subpart;

(2) Include a reply form and a self-addressed envelope together with the opt out notice required by this subpart;

(3) Provide an electronic means to opt out, such as a form that can be electronically mailed or processed at your Web site, if the consumer agrees to the electronic delivery of information; or

(4) Provide a toll-free telephone number that consumers may call to opt out.

(b) *Methods of opting out that are not reasonable or simple.* You *do not* provide a reasonable and simple method for exercising an opt out right if you—

(1) Require the consumer to write his or her own letter to you;

(2) Require the consumer to call or write to you to obtain a form for opting out, rather than including the form with the notice; or

(3) Require the consumer who agrees to receive the opt out notice in electronic form only, such as by electronic mail or at your Web site, to opt out solely by telephone or by paper mail.

§ 717.24 Delivery of opt out notices.

(a) *In general.* You must provide an opt out notice so that each consumer can reasonably be expected to receive actual notice. For opt out notices you provide electronically, you may either comply with the electronic disclosure provisions in this subpart or with the provisions in section 101 of the Electronic Signatures in Global and National Commerce Act, 15 U.S.C. 7001 *et seq.*

(b) *Examples of expectation of actual notice.* (1) You may reasonably expect that a consumer will receive actual notice if you:

(i) Hand-deliver a printed copy of the notice to the consumer;

(ii) Mail a printed copy of the notice to the last known mailing address of the consumer; or

(iii) For the consumer who obtains a product or service from you electronically, such as on an Internet Web site, post the notice on your electronic site and require the consumer to acknowledge receipt of the notice as a necessary step to obtaining a particular product or service.

(2) You may *not* reasonably expect that a consumer will receive actual notice if you:

(i) Only post a sign in your branch or office or generally publish advertisements presenting your notice; or

(ii) Send the notice via electronic mail to a consumer who has not agreed to the electronic delivery of information.

(c) *Joint notice with affiliates*—(1) *In general.* You may provide a joint notice from you and one or more of your affiliates, as identified in the notice, so long as the notice is accurate with respect to you and each affiliate.

(2) *Identification of affiliates.* You do not have to list each affiliate providing the joint notice by its name. If each affiliate shares a common name, such as ''ABC,'' then the joint notice may state that it applies to ''all institutions with the ABC name'' or ''all affiliates in the ABC family of companies.'' If, however, an affiliate does not have ABC in its name, then the joint notice must separately identify each family of companies with a common name or the institution.

(d) *Joint relationships*—(1) *In general.* If two or more consumers jointly obtain a product or service from you (joint consumers), the following rules apply:

(i) You may provide a single opt out notice.

(ii) Any of the joint consumers may exercise the right to opt out.

(iii) You may either—

(A) Treat an opt out direction by a joint consumer as applying to all of the associated joint consumers; or

(B) Permit each joint consumer to opt out separately.

(iv) If you permit each joint consumer to opt out separately, you must permit:

(A) One of the joint consumers to opt out on behalf of all of the joint consumers; and

(B) One or more joint consumers to notify you of their opt out directions in a single response.

(v) You must explain in your opt out notice which of the policies in paragraph (d)(1)(iii) of this section you will follow, as well as the information required by paragraph (d)(1)(iv) of this section.

(vi) You may not require *all* joint consumers to opt out before you implement *any* opt out direction.

(vii) If you receive an opt out by a particular joint consumer that does not apply to the others, you may use eligibility information about the others as long as no eligibility information is used about the consumer who opted out.

(2) *Example.* If consumers X and Y, who have different addresses, have a joint checking account with you and arrange for you to send statements to X's address, you may do any of the following, but you must explain in your opt out notice which opt out policy you will follow. You may send a single opt out notice to X's address and:

(i) Treat an opt out direction by X as applying to the entire account. If you do so and X opts out, you may not require Y to opt out as well before implementing X's opt out direction.

(ii) Treat X's opt out direction as applying to X only. If you do so, you must also permit:

(A) X and Y to opt out for each other; and

(B) X and Y to notify you of their opt out directions in a single response (such as on a single form) if they choose to give separate opt out directions.

(iii) If X opts out only for X, and Y does not opt out, your affiliate may use information only about Y to send solicitations to Y, but may not use information about X and Y jointly to send solicitations to Y.

§ 717.25 Duration and effect of opt out.

(a) *Duration of opt out.* A consumer's election to opt out is effective for the opt out period, which is a period of at least 5 years beginning as soon as reasonably practicable after the consumer's opt out election is received. You may establish an opt out period of more than 5 years, including an opt out period that does

not expire unless the consumer revokes it in writing, or if the consumer agrees, electronically.

(b) *Effect of opt out.* A receiving affiliate may not make or send solicitations to a consumer during the opt out period based on eligibility information it receives from an affiliate, except as provided in the exceptions in § 717.20(c) or if the consumer revokes the opt out.

(c) *Time of opt out.* A consumer may opt out at any time.

(d) *Termination of relationship.* If the consumer's relationship with you terminates when a consumer's opt out election is in force, the opt out continues to apply indefinitely, unless revoked by the consumer.

§ 717.26 Extension of opt out.

(a) *In general.* For a consumer who has opted out, a receiving affiliate may not make or send solicitations to the consumer after the expiration of the opt out period based on eligibility information it receives or has received from an affiliate, unless the person responsible for providing the initial opt out notice, or its successor, has given the consumer an extension notice and a reasonable opportunity to extend the opt out, and the consumer does not extend the opt out.

(b) *Duration of extension.* Each opt out extension must comply with § 717.25(a).

(c) *Contents of extension notice.* The notice provided at extension must be clear, conspicuous, and concise, and must accurately disclose either:

(1) The same contents specified in § 717.21(a) for the initial notice, along with a statement explaining that the consumer's previous opt out has expired or is about to expire, as applicable, and that the consumer must opt out again if the consumer wishes to keep the opt out election in force; or

(2) Each of the items listed below:

(i) That the consumer previously elected to limit your affiliate from using information about the consumer that it obtains from you to make or send solicitations to the consumer;

(ii) That the consumer's election has expired or is about to expire, as applicable;

(iii) That the consumer may elect to extend the consumer's previous election; and

(iv) A reasonable and simple method for the consumer to opt out.

(d) *Timing of the extension notice*—(1) *In general.* An extension notice may be provided to the consumer either—

(i) A reasonable period of time before the expiration of the opt out period; or

(ii) Any time after the expiration of the opt out period but before any affiliate makes or sends solicitations to the consumer that would have been prohibited by the expired opt out.

(2) *Reasonable period of time before expiration.* Providing an extension notice on or with the last annual privacy notice required by the Gramm-Leach-Bliley Act, 15 U.S.C. 6801 *et seq.,* that is provided to the consumer before expiration of the opt out period will be deemed reasonable in all cases.

(e) *No effect on opt out period.* The opt out period may not be shortened to a period of less than 5 years by sending an extension notice to the consumer before expiration of the opt out period.

§ 717.27 Consolidated and equivalent notices.

(a) *Coordinated and consolidated notices.* A notice required by this subpart may be coordinated and consolidated with any other notice or disclosure required to be issued under any other provision of law, including but not limited to the notice described in section 603(d)(2)(A)(iii) of the Act and the Gramm-Leach-Bliley Act privacy notice.

(b) *Equivalent notices.* A notice or other disclosure that is equivalent to the notice required by this subpart, and that you provide to a consumer together with disclosures required by any other provision of law, satisfies the requirements of this subpart.

6. A new Appendix A to part 717 is added to read as follows:

Appendix A to Part 717—Model Forms for Opt Out Notices

A–1—Model Form for Initial Opt Out Notice

Your Choice To Limit Marketing

• You may limit our affiliates from marketing their products or services to you based on information that we share with them, such as your income, your account history with us, and your credit score.

• [Include if applicable.] Your decision to limit marketing offers from our affiliates will apply for 5 years. Once that period expires, you will be allowed to extend your decision.

• [Include if applicable.] This limitation does not apply in certain circumstances, such as if you currently do business with one of our affiliates or if you ask to receive information or offers from them.

To limit marketing offers [include all that apply]:

• Call us toll-free at 877–###–####; or

• Visit our Web site at *www.websiteaddress.com;* or

• Check the box below and mail it to:

[Company name].
[Company address].

__ I do not want your affiliates to market their products or services to me based on information that you share with them.

A–2—Model Form for Extension Notice

Extending Your Choice To Limit Marketing

• You previously chose to limit our affiliates from marketing their products or services to you based on information that we share with them, such as your income, your account history with us, and your credit score.

• Your choice has expired or is about to expire.

• [Include if applicable.] This limitation does not apply in certain circumstances, such as if you currently do business with one of our affiliates or if you ask to receive information or offers from them.

To extend your choice for another 5 years [include all that apply]:

• Call us toll-free at 877–###–####; or

• Visit our Web site at *www.websiteaddress.com;* or

• Check the box below and mail it to:

[Company name].
[Company address].

__ I want to extend my choice for another 5 years.

A–3—Model Form for Voluntary ''No Marketing'' Notice

Your Choice To Stop Marketing

• You may choose to stop all marketing offers from us and our affiliates.

To stop all marketing offers [include all that apply]:

• Call us toll-free at 877–###–####; or

• Visit our Web site at *www.websiteaddress.com;* or

• Check the box on the form below and mail it to:

[Company name].
[Company address].

__ I do not want you or your affiliates to send me marketing offers.

Dated: June 18, 2004.

John D. Hawke, Jr.,

Comptroller of the Currency.

By order of the Board of Governors of the Federal Reserve System, July 1, 2004.

Jennifer J. Johnson,

Secretary of the Board.

Dated at Washington, DC, this 28th day of June, 2004.

By order of the Board of Directors, Federal Deposit Insurance Corporation.

Valerie J. Best,

Assistant Executive Secretary.

Dated: May 26, 2004.

By the Office of Thrift Supervision.

James E. Gilleran,

Director.

By the National Credit Union Administration Board on June 24, 2004.

Becky Baker,

Secretary.

[FR Doc. 04–15950 Filed 7–14–04; 8:45 am]

BILLING CODE 4810–33–P; 6210–01–P; 6714–01–P; 6720–01–P; 7535–01–P

Federal Register

Thursday,
July 15, 2004

Part III

Department of Defense
General Services Administration
National Aeronautics and Space Administration

48 CFR Parts 45 and 52
Federal Acquisition Regulation; Government Property Rental and Special Tooling; Proposed Rule

DEPARTMENT OF DEFENSE

GENERAL SERVICES ADMINISTRATION

NATIONAL AERONAUTICS AND SPACE ADMINISTRATION

48 CFR Parts 45 and 52

[FAR Case 2002–015]

RIN 9000–AJ99

Federal Acquisition Regulation; Government Property Rental and Special Tooling

AGENCIES: Department of Defense (DoD), General Services Administration (GSA), and National Aeronautics and Space Administration (NASA).

ACTION: Proposed rule.

SUMMARY: The Civilian Agency Acquisition Council and the Defense Acquisition Regulations Council (Councils) are proposing to amend the Federal Acquisition Regulation (FAR) by incorporating the Class Deviations regarding use and charges and special tooling, both of which have been applicable to the Department of Defense since 1998. Both deviations are appropriate for application across the Federal Government. The change clarifies the basis for determining the rental charges for the use of Government property and is intended to promote the dual use of such property. It also revises the special tooling clause and addresses the issue of title to special tooling.

DATES: Interested parties should submit comments in writing on or before September 13, 2004 to be considered in the formulation of a final rule.

ADDRESSES: Submit comments identified by FAR case 2002–015 by any of the following methods:

- Federal eRulemaking Portal: *http://www.regulations.gov*. Follow the instructions for submitting comments.
- Agency Web Site: *http://www.acqnet.gov/far/ProposedRules/proposed.htm*. Click on the FAR case number to submit comments.
- E-mail: *farcase.2002–015@gsa.gov*. Include FAR case 2002–015 in the subject line of the message.
- Fax: 202–501–4067.
- Mail: General Services Administration, Regulatory Secretariat (VR), 1800 F Street, NW, Room 4035, ATTN: Laurie Duarte, Washington, DC 20405.

Instructions: Please submit comments only and cite FAR case 2002–015 in all correspondence related to this case. All comments received will be posted without change to *http://www.acqnet.gov/far/ProposedRules/proposed.htm*, including any personal information provided.

FOR FURTHER INFORMATION CONTACT: The FAR Secretariat at (202) 501–4755 for information pertaining to status or publication schedules. For clarification of content, contact Ms. Jeritta Parnell, Procurement Analyst, at (202) 501–4082. Please cite FAR case 2002–015.

SUPPLEMENTARY INFORMATION:

A. Background

The proposed rule incorporates two Department of Defense class deviations 98–O0010, Use and Charges, and 98–O0011, Special Tooling, into FAR Part 45 and makes appropriate revisions to FAR 52.245–9, Use and Charges, and FAR 52.245–17, Special Tooling. The proposed rule establishes, as the basis for rental charges, the time property is actually used for commercial purposes, rather than time available for use; permits contractors to obtain property appraisals from independent appraisers; permits appraisal-based rentals for all property; and allows contracting officers to consider alternate bases for determining rentals. These changes are intended to encourage dual use of Government property. The revised rental calculation would also be used in the procedures for eliminating competitive advantage associated with contractor possession of Government property (see FAR Subpart 45.2).

With respect to special tooling, the proposed rule substitutes a substantially revised special tooling clause for the clause at 52.245–17, Special Tooling, and waives that portion of the clause at 52.245–2, Government Property (Fixed-Price Contracts), that states that special tooling is subject to title provisions in that latter clause. The revised clause adds title provisions.

This is not a significant regulatory action and, therefore, was not subject to review under Section 6(b) of Executive Order 12866, Regulatory Planning and Review, dated September 30, 1993. This rule is not a major rule under 5 U.S.C. 804.

B. Regulatory Flexibility Act

The Councils do not expect this proposed rule to have a significant economic impact on a substantial number of small entities within the meaning of the Regulatory Flexibility Act, 5 U.S.C. 601, *et seq.* Adoption of the proposed changes may have a slight reduction in recordkeeping requirements for civilian agency contractors and would decrease the amount of information required under the reporting requirements. An Initial Regulatory Flexibility Analysis has, therefore, not been performed. The Councils invite comments from small businesses and other interested parties. The Councils will consider comments from small entities concerning the affected FAR Parts 45 and 52 in accordance with 5 U.S.C. 610. Interested parties must submit such comments separately and should cite 5 U.S.C. 601, *et seq.* (FAR case 2002–015), in correspondence.

C. Paperwork Reduction Act

The Paperwork Reduction Act does apply; however, these changes to the FAR do not impose additional information collection requirements to the paperwork burden previously approved under OMB Control Number 9000–0075.

We are publishing the current burdens associated with this case for your information. The following information for OMB Clearance 9000–0075 is provided:

Annual Reporting Burden:

FAR 52.245–9 and 45.302–6(c). The Government property is provided to contractors on a rent-free use basis. However, we estimate that 10 percent of all contractors use property that requires rental payments. We estimate that 500 contractors submit 4 quarterly reports, and that it takes 1 hour to store, retrieve, prepare and submit the report.

Respondents: 500
Responses per respondent: 4
Total annual responses: 2,000
Preparation hours per response: 1
Total response burden hours: 2000

FAR 52.245–17(f)(1) and 45.306–5. We estimate that approximately 900 contractors have special tooling. Using the 900 as a baseline, we estimate that 75 contractors also must maintain records on special tooling that they actually produce. We estimate that each contractor maintains 200 records and it takes 30 minutes to prepare each record.

Respondents: 75
Responses per respondent: 200
Total annual responses: 15,000
Preparation hours per response: .5
Total response burden hours: 7,500

The FAR requires three lists. We added hours for the initial list of special tooling and the final list of special tooling. The excess list of special tooling is covered in the paragraph below. We calculated additional hours as follows:

Respondents: 900
Responses per respondent: 10
Total annual responses: 9,000
Preparation hours per response: 1.5
Total response burden hours: 13,500

FAR 52.245–17(h). Of the 75 contractors maintaining special tooling

in accordance with this clause, we estimate that 15 percent, or approximately 12 contractors submit excess listings and that it takes each contractor 2 hours to store, retrieve, prepare and submit the information.

Respondents: 12
Responses per respondent: 1
Total annual responses: 12
Preparation hours per response: 2
Total response burden hours: 24

If this rule is approved as a final rule, this coverage will be deleted and the burden hours will be slightly reduced.

FAR 52.245–17(i)(4) requires contractors to submit two copies of all special tooling lists to the ACO, PCO, and ICP unless otherwise directed. We calculate the hours as follows:

Respondents: 900
Responses per respondent: 10
Total annual responses: 9,000
Preparation hours per response: .1
Total response burden hours: 900

Requester may obtain a copy of the information collection from the General Services Administration, FAR Secretariat (VR), Room 4035, Washington, DC 20405, telephone (202) 501–4755. Please cite OMB Control Number 9000–0075, Government Property, in all correspondence.

List of Subjects in 48 CFR Parts 45 and 52

Government procurement.

Dated: July 7, 2004.

Laura Auletta,

Director, Acquisition Policy Division.

Therefore, DoD, GSA, and NASA propose amending 48 CFR parts 45 and 52 as set forth below:

1. The authority citation for 48 CFR parts 45 and 52 is revised to read as follows:

Authority: 40 U.S.C. 121(c); 10 U.S.C. chapter 137; and 42 U.S.C. 2473(c).

PART 45—GOVERNMENT PROPERTY

2. Amend section 45.106 by adding paragraph (h) to read as follows:

45.106 Government property clauses.

* * * * *

(h)(1) Insert the clause at 52.245–9, Use and Charges—

(i) In fixed-price or labor-hour solicitations and contracts under which the Government will furnish property for performance of the contract;

(ii) In all cost-reimbursement and time-and-materials solicitations and contracts; and

(iii) When a consolidated facilities contract or a facilities use contract is contemplated.

(2) The contracting officer may modify the clause if an alternative rental methodology is used in accordance with 45.403.

45.302–6 [Amended]

3. Amend section 45.302–6 by removing paragraph (c); and redesignating paragraphs (d) and (e) as paragraphs (c) and (d), respectively.

4. Revise section 45.306–5 to read as follows:

45.306–5 Contract clause.

Insert the clause at 52.245–17, Special Tooling, in solicitations and contracts when—

(a) A fixed-price contract is contemplated;

(b) The Government desires to reserve the right to obtain title in the special tooling acquired by the contractor; and

(c) The Special Tooling is not a required deliverable.

5. Revise section 45.403 to read as follows:

45.403 Rental—Use and Charges clause.

(a) The contracting officer shall charge contractors rent for using Government production and research property, except as prescribed in 45.404 and 45.405. Rent shall be computed in accordance with the clause at 52.245–9, Use and Charges. If the agency head determines it to be in the Government's interest, an alternative method for computing rent may be used.

(b) The contracting officer shall ensure the collection of any rent due the Government from the contractor.

45.505–1 [Amended]

6. Amend section 45.505–1 in the introductory text of paragraph (a) by adding ''or unless records are maintained as required by paragraph (h) of the clause at 52.245–17, Special Tooling,'' after the word ''section,''

45.505–4 [Amended]

7. Amend section 45.505–4 in paragraph (a) by adding ''or unless records are maintained as required by paragraph (h) of the clause at 52.245–17, Special Tooling,'' after ''45.505–1(b),''

PART 52—SOLICITATION PROVISIONS AND CONTRACT CLAUSES

8. Amend section 52.245–2 by revising the date of the clause; removing the second sentence of paragraph (c)(2); and revising paragraph (c)(3) to read as follows:

52.245–2 Government Property (Fixed-Price Contracts).

* * * * *

GOVERNMENT PROPERTY (FIXED-PRICE CONTRACTS) (DATE)

* * * * *

(c) * * *

(3) Title to each item of facilities, and special test equipment and special tooling (other than that subject to the clause at 52.245–17, Special Tooling), acquired by the Contractor for the Government under this contract shall pass to and vest in the Government when its use in performing this contract commences or when the Government has paid for it, whichever is earlier, whether or not title previously vested in the Government.

* * * * *

9. Revise section 52.245–9 to read as follows:

52.245–9 Use and Charges.

As prescribed in 45.106(h), insert the following clause in solicitations and contracts:

USE AND CHARGES (DATE)

(a) *Definitions.* As used in this clause:

Acquisition cost means the acquisition cost recorded in the Contractor's property control system or, in the absence of such record, the value attributed by the Government to a Government property item for purposes of determining a reasonable rental charge.

Government property means all property owned by or leased to the Government or acquired by the Government under the terms of the contract. It includes both Government-furnished property and contractor-acquired property as defined in FAR 45.101.

Real property means land and rights in land, ground improvements, utility distribution systems, and buildings and other structures. It does not include foundations and other work necessary for installing special tooling, special test equipment, or equipment.

Rental period means the calendar period during which Government property is made available for nongovernmental purposes.

Rental time means the number of hours, to the nearest whole hour, rented property is actually used for non-governmental purposes. It includes time to set up the property for such purposes, perform required maintenance, and restore the property to its condition prior to rental (less normal wear and tear).

(b) *Use of Government property.* The Contractor may use the Government property without charge in the performance of—

(1) Contracts with the Government that specifically authorize such use without charge;

(2) Subcontracts of any tier under Government prime contracts if the Contracting Officer having cognizance of the prime contract—

(i) Approves a subcontract specifically authorizing such use; or

(ii) Otherwise authorizes such use in writing; and

(3) Other work, if the Contracting Officer specifically authorizes in writing use without charge for such work.

(c) *Rental.* If granted written permission by the Contracting Officer, or if it is specifically provided for in the Schedule, the Contractor may use the Government property (except material) for a rental fee for work other than that provided in paragraph (b) of this clause.

Authorizing such use of the Government property does not waive any rights of the Government to terminate the Contractor's right to use the Government property. The rental fee shall be determined in accordance with the following paragraphs.

(d) *General.* (1) Rental requests shall be submitted to the administrative Contracting Officer, identify the property for which rental is requested, propose a rental period, and compute an estimated rental charge by using the Contractor's best estimate of rental time in the formulae described in paragraph (e) of this clause.

(2) The Contractor shall not use Government property for nongovernmental purposes, including Independent Research and Development, until a rental charge for real property, or estimated rental charge for other property, is agreed upon. Rented property shall be used only on a non-interference basis.

(e) *Rental charge.* (1) *Real property and associated fixtures.* (i) The Contractor shall obtain, at its expense, a property appraisal from an independent licensed, accredited, or certified appraiser that computes a monthly, daily, or hourly rental rate for comparable commercial property. The appraisal may be used to compute rentals under this clause throughout its effective period or, if an effective period is not stated in the appraisal, for one year following the date the appraisal was performed. The Contractor shall submit the appraisal to the Administrative Contracting Officer at least 30 days prior to the date the property is needed for nongovernmental use. Except as provided in paragraph (e)(1)(iii) of this clause, the administrative Contracting Officer shall use the appraisal rental rate to determine a reasonable rental charge.

(ii) Rental charges shall be determined by multiplying the rental time by the appraisal rental rate expressed as a rate per hour. Monthly or daily appraisal rental rates shall be divided by 720 or 24, respectively, to determine an hourly rental rate.

(iii) When the administrative Contracting Officer has reason to believe the appraisal rental rate is not reasonable, he or she shall promptly notify the Contractor and provide his or her rationale. The parties may agree on an alternate means for computing a reasonable rental charge.

(iv) The Contractor shall obtain, at its expense, additional property appraisals in the same manner as provided in paragraph (e)(1)(i) if the effective period has expired and the Contractor desires the continued use of property for non-governmental use. The Contractor may obtain additional appraisals within the effective period of the current appraisal if the market prices decrease substantially.

(2) *Other Government property.* The Contractor may elect to compute the rental charge using the appraisal method described in paragraph (e)(1) of this clause subject to the constraints therein or the following formula in which rental time shall be expressed in increments of not less than one hour with portions of hours rounded to the next higher hour: The rental charge is calculated by multiplying 2 percent of the acquisition cost by the hours of rental time, and dividing by 720.

(3) *Alternative methodology.* The Contractor may request consideration of an alternative basis for computing the rental charge if it considers the monthly rental rate or a time-based rental unreasonable or impractical.

(f) *Rental payments.* (1) Rent is due at the time and place specified by the Contracting Officer. If a time is not specified, the rental is due 60 days following completion of the rental period. The Contractor shall compute the rental due, and furnish records or other supporting data in sufficient detail to permit the administrative Contracting Officer to verify the rental time and computation. Payment shall be made by check payable to the Treasurer of the United States and sent to the contract administration office identified in this contract, unless otherwise specified by the contracting officer.

(2) Interest will be charged if payment is not made by the specified payment date or, in the absence of a specified date, the 61st day following completion of the rental period. Interest will accrue at the ''Renegotiation Board Interest Rate'' (published in the **Federal Register** semiannually on or about January 1st and July 1st) for the period in which the rent is due.

(3) The Government's acceptance of any rental payment under this clause, in whole or in part, shall not be construed as a waiver or relinquishment of any rights it may have against the Contractor stemming from the Contractor's unauthorized use of Government property or any other failure to perform this contract according to its terms.

(g) *Use revocation.* At any time during the rental period, the Government may revoke nongovernmental use authorization and require the Contractor, at the Contractor's expense, to return the property to the Government, restore the property to its pre-rental condition (less normal wear and tear), or both.

(h) *Unauthorized use.* The unauthorized use of Government property can subject a person to fines, imprisonment, or both, under 18 U.S.C. 641.

(End of clause)

52.245–10 [Amended]

10. Amend section 52.245–10 in the introductory paragraph by removing ''45.302–6(d)'' and adding ''45.302–6(c)'' in its place.

52.245–11 [Amended]

11. Amend section 52.245–11 in the introductory paragraph by removing ''45.302–6(c)(1)'' and adding ''45.302–6(d)(1)'' in its place.

12. Revise section 52.245–17 to read as follows:

52.245–17 Special Tooling.

As prescribed in 45.306–5, insert the following clause:

SPECIAL TOOLING (DATE)

(a) *Definition. Special tooling* means jigs, dies, fixtures, molds, patterns, taps, gauges, other equipment and manufacturing aids, all components of these items, and replacement of these items that are of such a specialized nature that without substantial modification or alteration their use is limited to the development or production of particular supplies or parts thereof or performing particular services. It does not include material, special test equipment, facilities (except foundations and similar improvements necessary for installing special tooling), general or special machine tools, or similar capital items.

(b) *Applicability.* This clause applies to all special tooling manufactured or acquired under this contract other than that identified as a deliverable.

(c) Special tooling, for the purpose of this clause, does not include any item acquired by the Contractor before the effective date of this contract, or replacement of such items, whether or not altered or adapted for use in performing this contract, or items specifically excluded by the Schedule of this contract.

(d) *Title.* The Government has the right to take title to all special tooling subject to this clause until such time as that right to take title is relinquished by the Contracting Officer as provided for in paragraphs (k)(3) and (4) of this clause.

(e) *Use of special tooling.* The Contractor agrees to use the special tooling only in performing this contract or as otherwise approved by the Contracting Officer.

(f) *Initial list of special tooling.* If the Contracting Officer so requests, the Contractor shall furnish the Government an initial list of all special tooling acquired or manufactured by the Contractor for performing this contract. The list shall specify the nomenclature, tool number, related product part number (or service performed), retention determination (see paragraph (e) of this clause) original acquisition date and unit acquisition cost of the special tooling. The list shall separately identify special tooling that has become obsolete due to design or specification changes. The list shall be furnished within 60 days after delivery of the first production end item under this contract unless a later date is prescribed.

(g) *Contractor's offer to retain special tooling.* The Contractor may indicate a desire to retain certain items of special tooling at the time it furnishes a list or notification pursuant to paragraph (f) or (j) of this clause. The Contractor shall furnish a written offer designating those items that it wishes to retain by specifically listing the items to include identifying the items as to the particular products, parts, or services for which the items were used or designed. The offer shall be made on one of the following bases:

(1) An amount shall be offered for retention of the items free of any Government interest. This amount should ordinarily not be less than the current fair value of the items, considering among other things, the value of the items to the Contractor for use in future work.

(2) Retention may be requested for a limited period of time and under terms as may be agreed to by the Government and the Contractor. This temporary retention is subject to final disposition pursuant to paragraph (k) of this clause.

(h) *Property control records.* The Contractor shall maintain adequate property control records of all special tooling in accordance with its normal industrial practice. The records shall be made available for Government inspection at all reasonable times. To the extent practicable, the Contractor shall identify all special tooling subject to this clause with an appropriate stamp, serial number, tag, or other mark.

(i) *Maintenance.* The Contractor shall take all reasonable steps necessary to maintain the identity and existing condition of usable items of special tooling from the date such items are no longer needed by the Contractor until final disposition under paragraph (k) of this clause. These maintenance requirements do not apply to those items designated by the Contracting Officer for disposal as scrap or identified as of no further interest to the Government under paragraph (k)(4) of this clause. The Contractor is not required to keep unneeded items of special tooling in place.

(j) *Final list of special tooling.* No later than 60 days prior to the last scheduled delivery on this contract, the Contractor shall furnish the Contracting Officer a final list of special tooling with the same information as required for the initial list under paragraph (f) of this clause. The final list shall include all items, with an identification of the items not previously reported under paragraph (f) of this clause. Special Tooling that has become obsolete as a result of changes in design or specification that was not previously reported under paragraph (f) of this clause shall be separately identified. The Contracting Officer may extend this requirement until the completion of this contract.

(k) *Disposition instructions.* The Contracting Officer shall provide the Contractor with disposition instructions for special tooling identified in a list submitted under paragraph (f) or (j) of this clause. The instructions shall be provided within 90 days of receipt of the list or notice, unless the period is extended by mutual agreement. The Contracting Officer may direct disposition by any of the methods listed in paragraphs (k)(1) through (4) of this clause, or a combination of such methods. Any failure of the Contracting Officer to provide specific instructions within the 90–day period shall be construed as direction under paragraph (k)(3) of this clause.

(1) The Contracting Officer shall give the Contractor a list specifying the products, parts, or services for which the Government may require special tooling and request the Contractor to transfer title (to the extent not previously transferred under any other clause of this contract) and deliver to the Government all usable items of special tooling that were designed for or used in the production or performance of such products, parts, or services and that were on hand when such production or performance ceased.

(2) The Contracting Officer may accept or reject any offer made by the Contractor under paragraph (g) of this clause to retain items of special tooling or may request further negotiation of the offer. The Contractor agrees to enter into the negotiations in good faith. The net proceeds from the Contracting Officer's acceptance of the Contractor's retention offer shall either be deducted from amounts due the Contractor under this contract or shall be otherwise paid to the Government as directed by the Contracting Officer.

(3) The Contracting Officer may direct the Contractor to sell, or dispose of as scrap, for the account of the Government, any special tooling reported by the Contractor under this clause. The net proceeds of all sales shall either be deducted from amounts due the Contractor under this contract or shall be otherwise paid to the Government as directed by the Contracting Officer. To the extent that the Contractor incurs any costs occasioned by compliance with such directions for which it is not otherwise compensated, the contract price shall be equitably adjusted in accordance with the Changes clause of this contract.

(4) The Contracting Officer may furnish the Contractor with a statement disclaiming further Government interest or rights in any of the special tooling listed.

(l) *Storage or shipment.* The Contractor shall promptly transfer to the Government title to the special tooling specified by the Contracting Officer and arrange for either the shipment or the storage of such tooling in accordance with the final disposition instructions in paragraph (k)(1) of this clause. Tooling to be shipped shall be properly packaged, packed, and marked in accordance with the directions of the Contracting Officer. Tooling to be stored shall be stored pursuant to a storage agreement between the Government and the Contractor, and as directed by the Contracting Officer. Tooling shipped or stored shall be accompanied by operation sheets or other appropriate data necessary to show the manufacturing operations or processes for which the items were used or designed. To the extent that the Contractor incurs costs for authorized storage or shipment under this paragraph and not otherwise compensated for, the contract price shall be equitably adjusted in accordance with the Changes clause of this contract.

(m) *Subcontract provisions.* In order to perform this contract, the Contractor may place subcontracts (including purchase orders) involving the use of special tooling. If the full cost of the tooling is charged to those subcontracts, the Contractor agrees to include in the subcontracts appropriate provisions to obtain Government rights comparable to the rights of the Government under this clause (unless the Contractor and the Contracting Officer agree that such rights are not of substantial interest to the Government). The Contractor agrees to exercise such rights for the benefit of the Government as directed by the Contracting Officer.

(End of clause)

[FR Doc. 04–15815 Filed 7–14–04; 8:45 am]

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Approving the renewal of import restrictions contained in the Burmese Freedom and Democracy Act of 2003. (July 7, 2004; 118 Stat. 818)

S. 2017/P.L. 108–273

To designate the United States courthouse and post office building located at 93 Atocha Street in Ponce, Puerto Rico, as the ''Luis A. Ferre United States Courthouse and Post Office Building''. (July 7, 2004; 118 Stat. 819)

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